84-1609 (1)
No.____

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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1984

JOAN L. MURPHY, LORRAINE R. MASON, EDITH L. MCGRODY, MARIE PEKALA, HENRIETTA ELLIOTT, CATHERINE BERES, VIRGINIA KNOWLES, ANN JACYSZYN, PEGGY FELMEY, ELEANOR NEYER, DORIS YOCUM AND ELIZABETH MCNASBY, on behalf of themselves and all others similarly situated,

Appellants

v.

COMMONWEALTH OF PENNSYLVANIA HUMAN RELATIONS COMMISSION AND CROWN CORK AND SEAL COMPANY, INC., AND SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, AFL-CIO, CAN WORKERS' UNION, LOCAL 266, a/k/a SHEET METAL PRODUCTION WORKERS UNION LOCAL NO. 266,

Appellees

JURISDICTIONAL STATEMENT ON APPEAL FROM THE SUPREME COURT OF PENNSYLVANIA

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QUESTIONS PRESENTED BY APPEAL

I. Did the "particularity" requirement for complaints filed under Section 9(a) of the Pennsylvania Human Relations Act violate the Due Process clause of the Fourteenth Amendment of the Constitution when it required that appellants and other similarly situated women could not have their claims heard by the Pennsylvania Human Relations Commission, although appellants made timely in-person and written complaints to the Commission in the manner and form as directed by the Commission, because, through no fault of appellants, after the statute of limitations had expired on appellants' claims, and without prior warning, the Pennsylvania Supreme Court construed the "particularity" provision of Section 9(a) to

render the Commission's complaint and appellants' complaints invalid, construed the "particularity" provision as jurisdictional and mandatory and applied it retroactively?

II. Did Section 9(a) of the Pennsylvania Human Relations Act deny to appellants and other similarly situated women the equal protection of the laws where although they made timely in-person and written complaints to the Pennsylvania Human Relations Commission in the manner and form as directed by the Commission, the Commission filed its own complaint as well, and, after due notice and a full public hearing, the Commission found that appellants employer and union had discriminated against all of its female employees, including appellants, (and had ordered relief to women who had not made timely complaint to the Commission, but whose claims arose within 90 days of the time the Commission filed an amended complaint) the Pennsylvania Supreme Court construed Section 9(a) of the Act to deny them any relief solely because the form of the original complaint filed by the Commission staff, as well as that filed by appellants, was not sufficiently detailed as to appellants' specific charges?

III. Did Section 9(a) of the Pennsylvania Human Relations Act, as interpreted by the Supreme Court of Pennsylvania, deprive appellants, and others similarly situated, of property without due process of law and deny them the equal protection of the laws by arbitrarily and irrationally preventing their access to the jurisdiction of the Pennsylvania Human Relations Commission, through the imposition of arbitrary, irrational and unnecessary barriers to that jurisdiction, where a timely proceeding before the Commission is a necessary prerequisite to obtaining a remedy for the violation of the civil rights protected by the Act? Specifically, despite the fact that the statute of limitations for claims of employment discrimination under the Act is only ninety (90) days, [Section 9(g)]:

(a) The complaint required to bring a claim o
discrimination before the Commission must specif
ically particularize the allegations of discriminatio
and failure adequately to do so deprives the Com
mission of subject matter jurisdiction, whether th
complainants are represented by counsel or - as i
the instant case - appear pro-se.

(b) If a complaint lacks sufficient particulariza
tion of the details of the alleged discrimination, a
amendment intended to cure the deficiency canno
relate back to the date of the original complaint.

(c) Failure of a respondent to object promptly t
a complaint on grounds that it lacks sufficient pa
ticularity does not constitute a waiver of that defec
nor permit a corrective amendment to relate back t
the original filing date of the complaint.

(d) The absence of prejudice to a responde
arising from the failure of an aggrieved party or th
Commission to sufficiently particularize the allege
discrimination in a complaint filed with the Commis
sion is not grounds for permitting a correctiv
amendment to relate back to the original filing da
of the complaint.

Each of the foregoing rules is directly contrary t
and more onerous than, the comparable rule of the Penn
sylvania Rules of Civil Procedure which govern all pr
ceedings before courts of record in Pennsylvania. Th
imposition of these rules makes access to the Commi
sion arbitrarily and unreasonably difficult, and is not r
tionally related to any legitimate state interest.

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**CERTIFICATE OF ADMISSION TO PRA
BEFORE THE SUPREME COURT O
THE UNITED STATES**

I, Alan M. Lerner, Esquire, counsel for A
hereby certify that I have been duly admitted
before the Supreme Court of the United Stat

/s/ ALAN M. LER
Alan M. Lerner

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A

JURISDICTIONAL STATEMENT ON AP
FROM THE SUPREME COURT
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OPINION BELOW

The Opinion rendered by the Supreme C
Pennsylvania in support of its judgment from wh
present appeal is taken is not officially reported.
officially reported at 486 A.2d 388 (1985). A cop

Opinion and Judgment are included in the Appendix to Appellants' Jurisdictional Statement. (A-87)[1] Also included in the Appendix to Appellants' Jurisdictional Statement are the opinions rendered by the Commonwealth Court of Pennsylvania (A-69) and the Pennsylvania Human Relations Commission. (A-57) The Opinion of the Commonwealth Court of Pennsylvania is officially reported at 77 Pa. Commw. Ct. 291 (1983). The Opinion of the Pennsylvania Human Relations Commission is unreported.

STATEMENT OF JURISDICTION

1. The judgment of the Supreme Court of Pennsylvania affirming the judgment of the Commonwealth Court of Pennsylvania, from which this direct appeal is taken, was entered on January 9, 1985. (A-87)

Appellants' Notice of Appeal was duly filed in the Supreme Court of Pennsylvania on April 4, 1985. (A-103) In accordance with the provisions of 28 U.S.C. § 2101 and Rule 13 of the Rules of the Supreme Court of the United States, this appeal is being timely docketed in this Court.

2. The jurisdiction to review this decision by direct appeal is conferred upon the Supreme Court of the United States by 28 U.S.C. § 1257(2). The judgment of the Pennsylvania Supreme Court (A-87) from which this appeal is being taken is final under the law of the Commonwealth of Pennsylvania. The Pennsylvania Supreme Court upheld Section 9(a) of the Pennsylvania Human Relations Act (43 P.S. § 959 (a)) in the face of appellants' constitutional claims based upon this Court's decision in *Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982). The following decision sustains the appellate jurisdiction

1. References throughout the text of Appellants' Jurisdictional Statement to the Appendix to the Jurisdictional Statement, which contains the opinions, judgments and other relevant documents from the Record below, are cited as "A-____."

of the Supreme Court of the United States to review the final judgment on direct appeal in this case:

Logan v. Zimmerman Brush Co., 455 U.S. 422 (1982).

Logan is indistinguishable from the instant case. It involved an appeal, pursuant to 28 U.S.C. § 1257(2), from the final judgment of the Illinois Supreme Court upholding the Illinois Fair Employment Practices Act's ("FEPA") provision requiring that a fact finding hearing be scheduled within 120 days of the filing of a complaint, as jurisdictional and mandatory, or that the complaint be dismissed, in the face of appellant's claim that his rights to due process and equal protection were violated where the Illinois Fair Employment Practices Commission failed to schedule the hearing timely and his claim was dismissed. This Court held that the Illinois FEPA, as construed by the Illinois Supreme Court, deprived appellant of due process of law. Justices Blackmun, Brennan, Marshall and O'Connor, and Powell and Rehnquist concurred, in two separate opinions, on the ground that the Act denied appellant the equal protection of the law.

3. This action questions the constitutional validity of Section 9(a) of the Pennsylvania Human Relations Act, as construed by the Pennsylvania Supreme Court. That court held that appellants and other similarly situated women must be denied an opportunity to have their claims of sex discrimination in employment heard and decided on the merits under the Act solely because the Pennsylvania Human Relations Commission filed a technically defective form of complaint in response to the timely in-person complaints by eleven (11) female persons, and the timely written and notarized complaints of two of them in the manner and form as directed by the Commission. These complaints contained both individual and class-wide sex discrimination claims against their employer and union.

4. This suit also questions the constitutional validity of Section 9(a) of the Pennsylvania Human Relations

Act, as construed by the Pennsylvania Supreme Court, on equal protection grounds. As construed, the Act requires that appellants and other similarly situated women are entitled to no relief, while it grants relief to others, distinguishing between the two groups solely because the original complaint filed by the Commission on appellants' behalf, and the class action allegation of appellant McNasby's complaint, were technically deficient. Yet, appellants did bring timely complaints to the Human Relations Commission, while those persons held to be entitled to relief did not.

5. In the event that this Honorable Court deems this case inappropriate for review by direct appeal, appellants respectfully request that the papers and proceedings which have been submitted be regarded and acted upon as a Petition for a Writ of Certiorari pursuant to 28 U.S.C. § 2103.

6. Appellants believe that the merits of this case are governed by the decisions of this Court in *Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982), and *Cleveland Board of Education v. Loudermill*, 53 U.S.L.W. 4306 (U.S., March 19, 1985), and that this case is appropriate for summary reversal based upon those decisions.

QUESTIONS PRESENTED BY APPEAL

I. Did the "particularity" requirement for complaints filed under Section 9(a) of the Pennsylvania Human Relations Act violate the Due Process clause of the Fourteenth Amendment of the Constitution when it required that appellants and other similarly situated women could not have their claims heard by the Pennsylvania Human Relations Commission, although appellants made timely in-person and written complaints to the Commission in the manner and form as directed by the Commission, because, through no fault of appellants, after the statute of limitations had expired on appellants' claims, and without prior warning, the Pennsylvania Supreme Court construed the "particularity" provision of Section 9(a) to

render the Commission's complaint and appellants' complaints invalid, construed the "particularity" provision as jurisdictional and mandatory and applied it retroactively?

II. Did Section 9(a) of the Pennsylvania Human Relations Act deny to appellants and other similarly situated women the equal protection of the laws where although they made timely in-person and written complaints to the Pennsylvania Human Relations Commission in the manner and form as directed by the Commission, the Commission filed its own complaint as well, and, after due notice and a full public hearing, the Commission found that appellants employer and union had discriminated against all of its female employees, including appellants, (and had ordered relief to women who had not made timely complaint to the Commission, but whose claims arose within 90 days of the time the Commission filed an amended complaint) the Pennsylvania Supreme Court construed Section 9(a) of the Act to deny them any relief solely because the form of the original complaint filed by the Commission staff, as well as that filed by appellants, was not sufficiently detailed as to appellants' specific charges?

III. Did Section 9(a) of the Pennsylvania Human Relations Act, as interpreted by the Supreme Court of Pennsylvania, deprive appellants, and others similarly situated, of property without due process of law and deny them the equal protection of the laws by arbitrarily and irrationally preventing their access to the jurisdiction of the Pennsylvania Human Relations Commission, through the imposition of arbitrary, irrational and unnecessary barriers to that jurisdiction, where a timely proceeding before the Commission is a necessary prerequisite to obtaining a remedy for the violation of the civil rights protected by the Act? Specifically, despite the fact that the statute of limitations for claims of employment discrimination under the Act is only ninety (90) days, [Section 9(g)]:

(a) The complaint required to bring a claim of discrimination before the Commission must specifically particularize the allegations of discrimination, and failure adequately to do so deprives the Commission of subject matter jurisdiction, whether the complainants are represented by counsel or - as in the instant case - appear pro-se.

(b) If a complaint lacks sufficient particularization of the details of the alleged discrimination, an amendment intended to cure the deficiency cannot relate back to the date of the original complaint.

(c) Failure of a respondent to object promptly to a complaint on grounds that it lacks sufficient particularity does not constitute a waiver of that defect nor permit a corrective amendment to relate back to the original filing date of the complaint.

(d) The absence of prejudice to a respondent arising from the failure of an aggrieved party or the Commission to sufficiently particularize the alleged discrimination in a complaint filed with the Commission is not grounds for permitting a corrective amendment to relate back to the original filing date of the complaint.

Each of the foregoing rules is directly contrary to, and more onerous than, the comparable rule of the Pennsylvania Rules of Civil Procedure which govern all proceedings before courts of record in Pennsylvania. The imposition of these rules makes access to the Commission arbitrarily and unreasonably difficult, and is not rationally related to any legitimate state interest.

RAISING THE FEDERAL QUESTION

Appellants raised their claims of deprivation of property without due process of law and denial of the equal protection of the laws in their timely Motion for Recon-

sideration of the Recommendation of Hearing Panel Findings of Fact, Conclusions of Law, Opinion and Fina Order of the Pennsylvania Human Relations Commis sion, in their appeal to the Commonwealth Court o Pennsylvania and in their appeal to the Supreme Cour of Pennsylvania.

The Commission did not address appellants' consti tutional contentions. Both the Commonwealth Court o Pennsylvania and the Supreme Court of Pennsylvani held that appellants had no constitutionally protecte property interests of which they were deprived and tha they were not denied the equal protection of the laws.

STATEMENT OF THE CASE

The Pennsylvania Human Relations Act, 43 P.S § 951 *et seq.*, October 27, 1955, P.L. 744, as amended August 11, 1967, P.L. 208 ("Act") expressly prohibit discrimination in employment based upon sex, 43 P.S § 955(a), and creates the Pennsylvania Human Rela tions Commission ("Commission") "for the administra tion of the Act," 43 P.S. § 956. The Act empowers th Commission "to initiate, receive, investigate and pas upon complaints charging unlawful discriminatory prac tices." 43 P.S. § 957, and to award relief "including bu not limited to, hiring, reinstatement or upgrading of em ployees, with or without back pay." 43 P.S. § 959(f Complaints may be filed by aggrieved individuals or b "the Commission on its own initiative," 43 P.S. § 959(a and the Act requires that such complaints shall identif the person, employer, etc. alleged to have committed th unlawful discrimination, "shall set forth the particulars of the alleged discrimination and shall "contain suc other information as may be required by the Commi sion." 43 P.S. § 959(a). Complaints, whether filed by a aggrieved individual or the Commission, shall be subje to being "reasonably and fairly amend[ed]," 43 P.S. 959(e). The Act also directs the Commission to establis

rules or procedures "to govern, expedite and effectuate" the procedures set out in the Act, 43 P.S. § 959(g).

The Commission is instructed to hold hearings on complaints it receives, after investigation, but is "not . . . bound by the strict rules of evidence." 43 P.S. § 959(e). "If upon on all the evidence at the hearing, the Commission shall find that a respondent has engaged in or is engaging in any unlawful discriminatory practice. . . the Commission shall issue [a cease and desist order and grant such other remedies as it deems appropriate.]." 43 P.S. §959(f). The Commission has the power to order relief for persons other than specifically complaining aggrieved parties. *Canon-MacMillan School District v. Commonwealth Human Relations Commission*, 30 Commw. Ct. 1, 372 A.2d 498 (1977). Class actions are appropriate under the Act. *Commonwealth v. Freeport Area School District*, 467 Pa. 522, 359 A.2d 724 (1976). The Act contains a 90-day statute of limitations. 43 P.S. § 959(g).

On February 2, 1970, eleven (11) employees of appellee Crown Cork and Seal Company, Inc. ("Crown" or the "Company") went to the offices of the Commission to complain that Crown, with the acquiescence and assistance of their union (Sheet Metal Workers International Association, AFL-CIO; Can Workers' Union, Local 266, a/k/a Sheet Metal Production Workers' Union, Local 266; hereinafter "Local 266" or "Union"), was discriminating against them and against all of Crown's female production workers in every aspect of employment and, in particular, was engaged in a program to replace its female production employees with males. The Commission staff prepared a detailed statement of the claims, including the names, addresses, telephone numbers and years of seniority of each of the complainants. (A-114)

Although requested to do so, the staff refused to initiate a Commissioner's Complaint because there were multiple complainants. However, the Commission's representative did tell appellants that to protect the rights of

all they needed to have only one of the women sign a written complaint. (A-118)

Within three (3) weeks one of the women, Mary Martin, submitted a notarized letter to the Commission detailing her complaints of sex discrimination, and stating that Crown was discriminating against all women. (A-106) Upon receipt of Mrs. Martin's letter, the Commission had her come in and execute a complaint on the Commission's form. (A-110-113) The Commission then proceeded to notify Crown and the Union and to commence its investigation.

From the outset, and throughout the investigation, both the Company and the Union were kept apprised of the nature and scope of the Commission's investigation. As early as April 27 and 28, 1970, the Commission's field representatives met with Crown's personnel supervisor and industrial relations manager, reviewed and obtained copies of personnel records and discussed the scope of the investigation. The investigation included visits by Commission staff to the Company's plant and offices. (A-124-128)

On June 18, 1970, another signed letter of complaint, that Crown and the Union discriminated against all women, was received by the Commission from Ms. Vivienne Haag. (A-120)

On November 17, 1970, Mrs. Martin wrote to the Commission informing it, without explanation, of her desire to withdraw her complaint. (A-123) The investigation of Mrs. Martin's complaint had, however, "indicated [to the Commission's staff] a pattern of discrimination in all phases of the Company's employment practices." (A-129) Consequently, before closing Mrs. Martin's case, the Commission, on the recommendation of its staff, but without notice to the appellants that their claims were no longer being pursued, issued its own Commissioner's Complaint, on December 22, 1970 (Docket No. E-4027). (A-141) The next day, the Commission served copies of its complaint on the Company and the Union (A-134-

135), and continued the investigation. On January 29, 1971, the Commission closed the case opened as a result of Mrs. Martin's prior class-wide complaint. (A-136-139)

Appellant Elizabeth McNasby submitted her written, signed complaint to the Commission on June 11, 1971, alleging that the Company and Union "have prevented her, as well as all other females, from enjoying equal job opportunities at Crown Cork and Seal Company." (A-140) The Commission accepted the complaint for filing and docketed it at No. E-4249. (Id.)

In April, 1972, the Commission issued its Findings of Probable Cause and initiated conciliation efforts. By mid-1972, counsel had entered appearances for both Crown and the Union, and participated in providing additional personnel data to the Commission.

In 1974, the Supreme Court of Pennsylvania, in the case of *Pennsylvania Human Relations Commission v. United States Steel Corp.*, 458 Pa. 559, 325 A.2d 910 (1974), held that because the form of complaint used by the Commission in that case was not sufficiently detailed to satisfy the requirement of (Section 9(a)) of the Act that the complaint must "set forth the particulars" of the alleged unlawful discriminatory practices, the Commission had failed to establish subject matter jurisdiction in the Commission and could not, therefore, enforce a subpoena which it had issued to United States Steel based upon that complaint.

As a result of this decision, the Commission, in October, 1975, filed a lengthy and detailed amended complaint against Crown and the Union to which were attached thirteen (13) affidavits of complainants, including those of most of the appellants herein. In addition to alleging numerous specific violations, that complaint asserted a class action claim and stated that all of the violations were "of a continuing nature." Crown filed an answer and new matter. The Union filed no answer but submitted a letter from its attorney stating that none needed to be filed. In April, 1976, the Commission served

Amended Findings on counsel for both Crown and t
Union.

In February, 1977, Crown filed a Motion to Dismi
the amended complaint and, in its supporting memora
dum of law argued, for the first time, that the origir
complaints filed in 1970 lacked the specificity requir
by the *United States Steel* decision. Neither the moti
nor the memorandum alleged any prejudice to Crow
The Commission deferred ruling on Crown's motic
pending completion of the public hearing.

After thirty-seven (37) days of public hearing,
which evidence was produced by the Commission st
and by the Company and the Union, the Commission,
August 28, 1981, issued its Recommendation of Heari
Panel, Findings of Fact, Conclusions of Law, Opini
and Final Order. (A-1) Relying on the testimony of
pellants and other female former and current Crown e
ployees concerning their personal experiences, as well
overwhelming statistical evidence of across-the-boa
discrimination against women, the Commission co
cluded that the case against the Company and the U
ion:

> . . . presents one of the most blatant [cases] of s
> discriminatory employment practices that has e
> been brought to the Commission's attention. [Fr
> July 9, 1969 (the effective date of the sex discri
> nation amendments to the Act) to December
> 1975] practices concerning hiring, transfer, pron
> tion, compensation, lay off and recall from lay
> were all tainted by extremely antiquated and ste
> otyped perceptions of female workers manifest
> Crown and Local 266, all operating to the detrim
> of women employees.

(A-28)

With respect to the appellants herein, the Comm
sion stated:

> We have no doubt that [they] were victimized b
> pattern of unlawful sex discrimination that we
> found to have been practiced by [the Company
> the Union] throughout all periods relevant to th
> igation.

(A-67)

These conclusions, from which neither Crow
Local 266 appealed, are amply supported by the
than 6,000 pages of record before the Commissio
the the Commission's 132 detailed Findings of Fa

Despite these findings and an order awarding
to class members with viable claims as of the tim
amended complaint was filed, the Commission, re
on the *United States Steel* decision, held that appe
and all other women who had no viable claims
ninety (90) days before the filing of the amended
plaint, were barred from all relief under the Act
because the Commission's December, 1970 com
was not sufficiently detailed and was therefore a
lity." It also held that Mrs. McNasby's allegation of
wide discrimination was similarly invalid.

The Commission's General Counsel, and appe
moved the Commission to reconsider. The Comm
agreed to reconsider, but despite specific referen
this Court's decision in *Logan v. Zimmerman Brus*
455 U.S. 422 (1982), by appellants, the Commissi
affirmed its holding that appellants and other w
similarly situated were barred from all relief und
Act. (A-57)

Appellants filed a timely appeal to the Com
wealth Court of Pennsylvania which affirmed. The
petitioned the Pennsylvania Supreme Court to gr
locatur. The Pennsylvania Supreme Court grant
locatur, and on January 9, 1985, affirmed the deci
the Commonwealth Court. Chief Justice Nix filed
senting opinion stating that under this Court's de
in *Logan v. Zimmerman Brush Co.*, the majority's

pretation of Section 9(a) of the Act violated appel constitutional rights. (A-98)

PRESENTATION OF THE SUBSTANTIAL FEDERAL QUESTIONS

I. Appellants Were Deprived of Property Withou Process of Law Because Under Section 9(a) of the sylvania Human Relations Act Their Rights to R For Unlawful Discrimination Under the Act We stroyed By the Failure of the Pennsylvania Hum lations Commission to File A Legally Valid Com Or To Notify Them That It Was No Longer Prot Their Rights.

A. Appellants' Right to Relief Under the Pennsy Human Relations Act Is A Constitutionally Pro Property Interest.

> The hallmark of property . . . is an individual entit grounded in state law, which cannot be removed 'for cause.'

Logan v. Zimmerman Brush Co., 455 U.S. 42 (1982). The Pennsylvania Human Relations A pressly declares that the right to equal employme portunity free from discrimination based upon s "civil right which shall be enforceable as set forth i [A]ct." 43 P.S. § 953. It also specifically prohib crimination in employment based upon sex, 43 955, creates the Commission to administer the A gives the Commission the power, after a hearin "upon all the evidence," to make findings of discr tion and to award to victims of unlawful discrimin wide variety of remedies "including but not lim hiring, reinstatement or upgrading of employees without back pay . . . ." 43 P.S. § 959(f).

Appellants' rights under the Pennsylvania A precisely the same as were those of the appel

Logan. In that case this Court held that plaintif
property interest in his right to bring an action ur
Illinois Fair Employment Practices Act, and that
had deprived him of this right without due proces
by terminating the cause of action solely becaus
linois Fair Employment Practices Commission ha
to schedule a fact-finding conference within
days required by statute. Just as in *Logan*, appel
this case possessed rights to redress created by t
statute "which cannot be removed except for ca

The court below erred in its application of
Reading *Logan* as declaring that the cause of acti
menced by the filing of a complaint by the ag
party was the *only* protected property interest, t
reasoned that since appellants never filed their o
ten complaints they never followed the "reasona
cedural requirements" necessary to obtain the
interest inherent in that cause of action. The co
found that appellants had no property right arisi
the Commission's complaint since the Commis
not represent them. *Murphy v. Commonwealth*
sylvania, ____Pa. ____, 486 A.2d 388 (1985). T
below erred in each of these conclusions.

The complaints filed by Mary Martin in F
1970, by the Commission in December, 1970
Elizabeth McNasby in June, 1971 created a
right in appellants. Following the clear directio
Act, appellants went to the Commission to c
about real and immediate discrimination to wh
and all women employed at Crown were subjec
to ask the Commission to initiate proceedings u
Act to protect them from this unlawful discrim
They had "more than an abstract desire or int
enforcement of the law on behalf of the Commo
They had a very personal need and desire for t
dies provided by the Act. And they had good

believe that if they followed the words of the A
Commission's directions, their rights woul
tected.

The plain language of the Act supports
understanding. It creates the Commission to
the Act, mandates that actions seeking redr
lawful employment discrimination be initiate
ing of complaints at the Commission, and pe
complaints to be filed by *either* an aggrieved in
the Commission. 43 P.S. § 959(a). On its fa
does not purport to draw any distinction betw
asserted in complaints filed by an aggrieved
those asserted in complaints filed by the Co
and it gives complainants no reason to believe
file individual complaints rather than rely upo
mission in order to assure that their rights to
protected. Indeed, the Commission was crea
very purpose of attacking the persistent prob
ployment discrimination "and to provide relie
who have been unjustly injured thereby." *Fy*
Transportation, Inc., 487 Pa. 137, 140, 40
(1979). Class actions may be brought und
Commonwealth v. Freeport Area School Dist
and the Commission has power to grant relie
persons other than specifically named co
Canon-MacMillan School District v. Common
man Relations Commission, supra.

The Commission itself, as well as the w
Act, gave appellants reason to believe that
were being fully protected. When appe
brought their charges to the Commission,
structed appellants that their rights would be
one of them signed a written complaint. This
tin did in February, 1970, and Elizabeth Mc
June, 1971. Both of these complaints allege
nation against *all* women at Crown. Moreove

of the Commission makes clear that the in-person complaints of appellants, the written complaint of Mary Martin and the investigation that flowed from them led directly to the Commission's filing its complaint in December, 1970. Indeed, the record is clear that the Commission's complaint was filed because Mrs. Martin decided unilaterally to withdraw her complaint, at a time when the Commission's investigation of her charges pointed to the existence of class-wide discrimination. And the Commissioners' complaint itself was framed as a class-wide complaint.

Thus, just as in *Perry v. Sinderman*, 408 U.S. 593 (1972), the absence of a formal, written contract or tenure policy did not preclude a finding that the teacher had a constitutionally protected property interest in continued employment; so here, the absence of a written complaint signed by each individual appellant does not preclude a finding that they had a constitutionally protected property right in the proceedings before the Commission.

Nor does the mere fact that the state characterized the particularity requirement of Section 9(a) as "jurisdictional" and mandatory deprive appellants of what would otherwise have been their protected property interests under the Act. In *Logan*, as in the instant case, the provision of the state statute was defined, under state law, as "jurisdictional" and "mandatory." Yet, in *Logan* this Court held that federal constitutional standards of due process had to be used to measure whether the appellant was properly denied his right to relief regardless of the state's characterization. Thus, the fact that Section 9(a) of the Act is "jurisdictional" and "mandatory" does not determine that it satisfies federal constitutional requirements for due process. *Cleveland Board of Education v. Loudermill*, 53 U.S.L.W. 4306, 4307-4308 (U.S., March 19, 1985).

In sum, even without the formality of a written complaint signed by each appellant, the provisions of the Act and the assurances of the Commission endowed appellants with a sufficient interest in, and expectation of, po-

tential direct and personal benefit from the Commission's December, 1970 complaint, and from Elizabeth McNasby's June, 1971 complaint, based upon the then-existing state of the record and the law, to create a "property" interest. Appellants could not be deprived of this property interest without due process of law. *Logan v. Zimmerman Brush Co.; Perry v. Sinderman*, 408 U.S. at 601-602.

B. Appellants Were Deprived of Their Property Without Due Process of Law.

At its simplest and most basic level, the protection guaranteed by the Due Process clause is that one should not be deprived of property without prior "notice and an opportunity for hearing appropriate to the nature of the case." *Logan v. Zimmerman Brush Co.*, 455 U.S. at 428, quoting *Mullane v. Central Hannover Bank & Trust Co.*, 339 U.S. 306, 313 (1950). Whether appellants are determined to have a property interest in their underlying right to redress under the Act, or whether they are determined to have such a property interest in their right to a meaningful opportunity to use the Act's adjudicatory procedures, or whether both interests are constitutionally protected property interests, it is clear that appellants were deprived of these interests without adequate notice and an opportunity for an appropriate hearing.

Once the Legislature in Pennsylvania created the civil right to be free from sex-based discrimination in employment, and provided a remedy for violation of that right, the state could not deprive persons of that state-created remedy except by rules or procedures that satisfy the requirements of the Constitution's due process guarantee. *Logan*, 455 U.S. at 432; *Vitek v. Jones*, 436 U.S. 407 (1978).

In the instant case, however, appellants were entirely deprived of their protected rights under the Act without the opportunity for notice or a hearing, despite

having complied fully with the dictates of the Act and of the Commission itself. Not only did the language of the Act explicitly allow *either* an aggrieved person or the Commission to file a complaint, the statute also lacked any provisions that would have served to notify appellants of any significant difference in the protection of their rights depending on who did file. Moreover, it is clear that the Commission first told appellants that, "All that would be necessary is *one* name on a complaint. . . ." (A-118) This was accomplished when Mary Martin filed her complaint in February, 1970, and again when Elizabeth McNasby filed hers in June, 1971.

Having complied with the plain language of the Act and the instructions of the Commission, provided affidavits for the amended complaint, given depositions and testified at the public hearing — done all that the Commission had asked of them and all that any reasonable person would have believed was required to protect their rights — the first time that appellants knew or had any reason to know that their claims, and those of fellow class members, had not been preserved by the proceedings undertaken by the Commission was *after* their rights had already expired. Appellants' right to relief was destroyed merely because, unbeknownst to them, the Commission's December, 1970 complaint (and the allegation in Mrs. McNasby's complaint that *all* women were being deprived of equal job opportunities by Crown and the Union) would be rendered invalid under Section 9(a) of the Act by the Pennsylvania Supreme Court's interpretation four years later in the *United States Steel* case. Thus, according to the Pennsylvania Supreme Court, which held that the Commission never obtained jurisdiction until it filed its amended complaint in 1975, the public hearing was no hearing at all with respect to the claims of appellants and other women similarly situated.

Appellants were therefore deprived of their property rights without notice or a hearing of any kind, a clear

violation of their rights under the Due Process clause of the Fourteenth Amendment of the Constitution. *Logan v. Zimmerman Brush Co.*

II. Appellants And Those Similarly Situated Were Denied The Equal Protection Of The Laws By Section 9(a) Of The Pennsylvania Human Relations Act When They Were Denied Relief Under The Act Solely Because The Human Relations Commission Filed A Technically Deficient Complaint Covering Their Claims And Because Its Advice To Them About How to File A Complaint Was Erroneous.

At the lowest level of equal protection scrutiny, a state may only "classify the persons that it affects in a manner rationally related to legitimate governmental concerns." *Logan*, 455 U.S. at 439, quoting *Schweiker v. Wilson*, 450 U.S. 221, 230 (1981) (concurring opinion of Blackmun, J.), 455 U.S. at 443 (concurring opinion of Powell, J.). Thus, "[t]he classification scheme must 'rationally advance a reasonable and identifiable governmental objective.' " *Id.*

Pennsylvania's enforcement of Section 9(a), however, unconstitutionally denied appellants relief which was granted to other former and current Crown employees based on a wholly irrational distinction. Appellants, and others similarly situated, were found to be entitled to no relief under the Pennsylvania Human Relations Act while other women who were victims of the same discrimination by Crown and the Union were found to be entitled to the Act's remedies. Yet, whereas appellants brought their complaints to the attention of the Commission in a timely fashion, and two (2) of their original number (Martin and McNasby) actually filed written, signed complaints, the persons deemed entitled to relief did not. Appellants provided information, affidavits and testimony to the Commission to assist in its investigation and trial; persons granted relief did not. The persons

granted relief did nothing to pursue their claims that appellants failed to do.

The only distinction that has been drawn between appellants and those persons deemed entitled to relief under the Act is that whereas appellants and other women similarly situated had valid claims when Mrs. Martin, the Commission and Mrs. McNasby filed complaints later held to be technically deficient under the Act, their claims had expired by the time the amended complaint was filed; while those persons who did nothing but were held entitled to relief still had viable claims when the Commission finally filed a valid amended complaint.

It is clear that this classification of claimants, solely on the basis of whether the Commission, or Mrs. Martin or Mrs. McNasby, filed a complaint which was sufficiently detailed does not " 'rationally advance [any] reasonable and identifiable governmental objective.' " *Id.* Indeed, the court below so held. (A-94)

In the court below, appellants argued that all of the State's legitimate objectives were satisfied by the proceedings before the Commission—i.e., that the Company and the Union had been given extensive notice of the nature, breadth and depth of the alleged discrimination about which Mrs. Martin, the Commission and Mrs. McNasby were complaining, and that neither respondent ever objected or claimed — let alone proved — any prejudice resulting from any lack of detail in any of the complaints. The Pennsylvania Supreme Court held that those arguments were irrelevant because the Act made the "particularity" requirement "jurisdictional," and because it applied retroactively. The necessary implication of this reasoning is that where the legislature mandates a classification, it need *not* "rationally advance any reasonable and identifiable governmental objective" so long as the classification is deemed by the state to be "jurisdictional." Such reasoning is directly contrary to the most fundamental requirement of the Equal Protection

clause and to this Court's discussion of the significance of "jurisdictional" characterizations in *Logan v. Zimmerman Brush Co. See supra,* discussion in Section I(A).

III. By Converting What In Other Areas of State Law And Practice Are Procedural Rules Governing Pleadings Into Jurisdictional Prerequisites Under the Human Relations Act, Section 9(a) Arbitrarily And Irrationally Deprived Appellants and Others Similarly Situated Of Reasonable Access To The Forum Designated For Administration of The Act.

Complaints filed in courts of record of Pennsylvania are not governed by the harsh "particularity" requirements of Section 9(a) of the Human Relations Act or any equivalent provision. The Pennsylvania Rules of Civil Procedure do require that plaintiffs' complaints set forth the *facts* giving rise to the asserted cause of action. Rule 1019, Pa. Rules of Civil Procedure.[2] However, consistent with the observation of Mr. Justice Powell, concurring in *Logan*, 455 U.S. at 443, the filing of a complaint which fails sufficiently to particularize the facts nevertheless tolls the running of the statute of limitations. 2 Goodrich-Amram, Standard Pennsylvania Practice, §§ 1033.1, 1033.4. Absent legally cognizable prejudice to the complaining party, the defect may be cured by subsequent amendment, even one filed after the date on which the statute of limitations would have run. *Keller v. Keller Motor Co.*, 386 Pa. 56, 58, 124 A.2d 105, 106 (1956); *Sands v. Forrest*, 290 Pa. Super. Ct. 48, 53, 434 A.2d 122, 125 (1981); *Peaceman v. Tedesco*, 51 Pa. Commw. Ct. 544, 414 A.2d 1119 (1980). Thus, a plaintiff who files a technically deficient complaint in a Pennsylvania court will

2. In the U.S. Steel case, the Pennsylvania Supreme Court expressly analogized the "particularity" requirement of Section 9(a) of the Act, 43 P.S. § 959(a), to the "fact pleading" requirement of the Pennsylvania Rules of Civil Procedure. 458 Pa. at 564-65.

not be deprived of access to the courts for adjudication of his claim.[3]

The court's holding below that these rules did not apply to a complaint filed with the Human Relations Commission — the forum in which one must commence a proceeding to remedy unlawful employment discrimination under the Act — unconstitutionally deprives civil rights complainants of equal protection under the law. The State may not place a special burden on minorities seeking to vindicate their rights in the governmental process. *Washington v. Seattle School District No. 1*, 458 U.S. 457 (1982); *Hunter v. Erickson*, 393 U.S. 385 (1969). Yet, ironically, although the Pennsylvania Human Relations Commission was created to provide a forum in which members of minority groups could seek redress for denial of their rights, Section 9(a) of the Act, as construed by the Pennsylvania Supreme Court, places a burden on the use of that forum that is not placed on anyone who seeks redress in the courts. The Section as construed therefore violates the Equal Protection clause of the Fourteenth Amendment.

Moreover, Pennsylvania's construction of the statute violates the due process requirement that where a state establishes an exclusive forum for adjudication of claims, it must give claimants a meaningful opportunity for access to that forum. See *United States v. Kras*, 409 U.S. 434 (1973); *Boddie v. Connecticut*, 401 U.S. 371, 380 (1971); *Logan v. Zimmerman Brush Co.* 455 U.S. at 430, n.5. The Pennsylvania Supreme Court's holding that failure of the Commission staff to particularize the alleged discrimination was a jurisdictional defect, and the court's retroactive application of that holding, effec-

3. Indeed, in such cases the absence of a timely objection constitutes a waiver of any objection that might be available to defendant to challenge the sufficiency of the factual pleading. *Mackey v. Adamski*, 286 Pa. Super. Ct. 456, 429 A.2d 28 (1981), Rule 1032, Pa.R.Civ.P.; 2 Goodrich-Amram, Standard Pennsylvania Practice, § 1032.1.

tively barred appellants' access to the Commission. By the time appellants had any reason to know that there was a problem with the Commission's complaint, the ninety (90) day statute of limitations on their claims had expired.

Similarly, distinguishing between those claimants who were permitted to have their claims adjudicated by the Commission and those who were not, solely upon the basis of whether the Commission itself filed a properly worded complaint within the time prescribed by the Act, does not promote any legitimate state interest in a rational way, and thus deprives appellants and others similarly situated of the equal protection of the laws. *Schweiker v. Wilson*, 450 U.S. at 23; *Logan v. Zimmerman Brush Co.*, 455 U.S. at 438 (concurring opinion of Blackmun, J.), 455 U.S. at 443 (concurring opinion of Powell, J.).

CONCLUSION

For the reasons stated above, this Court has juris diction of appellants' appeal, the appeal raises a substar tial question, and upon consideration thereof the Cou should reverse the final judgment of the Pennsylvan Supreme Court, and the final judgments of the Con monwealth Court of Pennsylvania and the Pennsylvan Human Relations Commission, with directions to ent judgment in favor of appellants and all others similar situated on their claims of sex discrimination in emplo ment by appellees Crown and Local 266, and to provi appropriate remedies for them.

Respectfully submitted,

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Dated: April 9, 1985

84-1609

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CLERK

No.____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1984

JOAN L. MURPHY, LORRAINE R. MASON, EDITH L. McGRODY, MARIE PEKALA, HENRIETTA ELLIOTT, CATHERINE BERES, VIRGINIA KNOWLES, ANN JACYSZYN, PEGGY FELMEY, ELEANOR NEYER, DORIS YOCUM AND ELIZABETH McNASBY, on behalf of themselves and all others similarly situated,

APPELLANTS

v.

COMMONWEALTH OF PENNSYLVANIA HUMAN RELATIONS COMMISSION AND CROWN CORK AND SEAL COMPANY, INC., AND SHEET METAL PRODUCTION WORKERS UNION LOCAL NO. 266,

APPELLEES

APPENDIX TO JURISDICTIONAL STATEMENT ON APPEAL FROM THE SUPREME COURT OF PENNSYLVANIA

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COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION

PENNSYLVANIA HUMAN RELATIONS COMMISSION, and ELEANOR E. NEYER, et al., *Complainants*	:	
v.	:	DOCKET NO. E-4027
CROWN CORK AND SEAL COMPANY, INC., PLANT NO. 1, and SHEET METAL PRODUCTION WORKERS' UNION, LOCAL 266, *Respondents*	:	

ELIZABETH McNASBY, *Complainant*	:	
v.	:	DOCKET NO. E-4249
CROWN CORK AND SEAL COMPANY, INC., and SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, AFL-CIO, CAN WORKERS' UNION, LOCAL 266 a/k/a SHEET METAL PRODUCTION WORKERS UNION, LOCAL 266, *Respondents*	:	

RECOMMENDATION OF HEARING PANEL
FINDINGS OF FACT, CONCLUSIONS OF LAW,
OPINION, AND FINAL ORDER

FINDINGS OF FACT

1. Respondent Crown Cork and Seal C
Inc. (hereinafter "Crown") is a corporation do
ness within the Commonwealth of Pennsylvani
international corporate headquarters located
Ashton Road, Philadelphia, Pennsylvania, alor
facility designated as Plant No. 1.

2. Respondent Sheet Metal Workers' Uni
No. 266 (hereinafter "Union" or "Local 266"),
with the Sheet Metal Workers' International As
AFL-CIO, is a labor organization which had an
ues to have offices at 6445 Frankford Avenue,
phia, Pennsylvania.

3. The Pennsylvania Human Relations
sion (hereinafter "PHRC" or "Commission"),
ecutive Director, Homer C. Floyd, filed a
against Crown and Local 266 at Docket No. E
December 20, 1970, alleging unlawful patt
practices of sex discrimination in recruitmen
ing, initial job assignment, promotions, overtin
and recall from layoffs.

4. Elizabeth McNasby filed a complaint
ful sex discrimination against Crown and Loc
Docket No. E-4249 on behalf of herself and o
larly situated female employes at Plant No. 1 o
June 11, 1971.

5. On October 27, 1975, the Commissio
amended complaint at Docket No. E-4027 se
very detailed allegations of unlawful sex discr
against Respondents Crown and Local 266.

6. Eleanor Neyer, Joan Murphy, Sara
Margaret Felmey, Lorraine Mason, Virginia
Doris Yocum, Edith McGrody, Marie Pekala
Cheplick, Henrietta Hunter, Ann Jacyszyn, an
Reed, all incumbent or past employees of Cr
cuted affidavits in 1975 and became individu
complainants in the amended complaint.

7. The Commission's original complaint made allegations that were general in nature. It consisted of 2 pages. The amended complaint was 34 pages, included very specific charges, was brought on behalf of several identified groups of female employes, and included allegations relating to the 13 individually named complainants.

8. The Commission initiated complaint at Docket No. E-4027, as amended, and the individual complaint of Elizabeth McNasby at Docket No. E-4249, were joined for purposes of administrative processing, including investigation, finding of probable cause, attempted conciliation, and public hearing.

9. Complainant Ann Jacyszyn was employed by Crown until 1966, when she was laid off and never recalled.

10. Complainants Eleanor Neyer, Joan Murphy, Margaret Felmey, Lorraine Mason, Virginia Knowles, Doris Yocum, Edith McGrody, Marie Pekala, Theresa Cheplick, and Henrietta Hunter were all laid off from employment at Crown for the last time between 1969 and 1971 and were never employed by Crown thereafter.

11. Complainant Sarah Cooper was employed at Crown until February 28, 1974, when she became disabled. From then through the dates of these hearings she has received disability retirement payments.

12. Complainants Theresa Reed and Elizabeth McNasby were continuously employed by Crown at all times from July 9, 1969 to the date of this administrative hearing.

13. During the period July 9, 1969 to December 31, 1975, Crown hired 50 males and no females. In the Philadelphia Standard Metropolitan Statistical Area for this time period, females comprised 30.6% of the available labor market in the non-durable industry category.

14. Between July 9, 1969 and December 31, 1975, 590 males or 62.6% of Crown's production and mainte-

nance employes at Plant No. 1 were male;
were female.

15. Between 1971 and 1975 aggre
ment of females at Plant No. 1 in the p
maintenance unit dropped from 26.3% of
to 20.5% of the work force.

16. Some time in the early 1950's, C
a system of sex-segregated job classificati

17. From that time until April, 196
tive bargaining agreement between Loc
predecessor unions) and Crown set fort
higher rated male jobs and a second group
female jobs.

24. At all times from July 9, 1969 to
1975, new employes at Plant No. 1 have
to their initial shift and department by Cr
nel Office, and to their initial job within th
and shift by their department/shift forem
always been initially assigned to home shi
ments in which male job openings existe
ticular male job within that home depart
new women were hired during this perio

25. At all times from July 9, 1969 to
1975, Crown, with the Union's acquiesce
tively maintained a sex-segregated syste
partment, and shift seniority for all of its
maintenance unit employes.

26. At all times material to this li
segregated seniority system has been m
used for purposes of ascertaining transf
layoff, and recall rights of employes.

27. A dual roster of plant seniority
date of original hire at Plant No. 1 or its pr
has been and continues to be maintained
nel Office on a sex-segregated basis.

28. Men's cards are filed chronol
section of a set of files known collectivel

seniority board" and women's cards are filed in a
rate section of the same "plant seniority board."

29. Similar sex-segregated dual rosters of
shift" and "home department" seniority are also
tained in the same location and are known as th
partment seniority boards."

30. As a result of this system, there are dual l
of job progression within all gender integrated d
ments. (Some departments are gender segregated
ing only men's jobs or only women's jobs.)

31. At all times since July 9, 1969, the col
bargaining agreements in force between Crown a
cal 266 have provided that employes are to be laid
inverse order of their date of initial hire at Plant N
its predecessor plant on Erie Avenue). In fact, ho
the sex-segregated plant seniority board has been
still today the sole system used for purposes of la
employes at Plant No. 1.

32. At any time when Crown finds it neces
reduce the number of personnel working in men
it uses this roster to locate the men with lowes
seniority. These men are then ordinarily laid off.
ever Crown finds it necessary to reduce the nur
employes in women's jobs, the sex-segregated se
board is utilized to select the women with lowes
seniority who are then laid off.

33. In 97.7% or 1311 of the 1342 instances
females were laid off between July 9, 1969 and D
ber 31, 1975, less senior males with equal or lo
classifications were retained in the employ of
within the production and maintenance unit a
No. 1.

34. Females were disproportionately subje
layoffs during the period July 9, 1969 to Decem
1975. There occurred 2764 layoffs during this ti
though females constituted 37.4% of all perso
ployed during the period, 48.6% of all layoffs we
male employes.

35. The mean duration of layoffs involving males during the period July 9, 1969 to December 31, 1975 was 33.5 days; the median was 17.4 days. The mean duration of layoffs involving females during the period was 45.9 days; the median was 23.8 days.

36. Although women constituted 37.4% of the production and maintenance unit work force during the period July 9, 1969 to December 31, 1975, they incurred 61.5% of the time spent in layoff status (76,198 days out of 123,977 total employe — days on layoff).

37. At all times since July 9, 1969, Crown has followed a practice of recalling employes from layoffs, based upon the same system of sex-segregated plant seniority used for layoffs.

38. When women's jobs must be filled, Crown recalls women from layoff based upon their plant seniority as shown on the sex-segregated seniority board.

39. Between July 9, 1969 and December 31, 1975 there were 975 instances where females remained in layoff status when males, with lower job classifications and with less seniority, were recalled to employment in the production and maintenance unit at Plan No. 1.

40. Between July 9, 1969 and December 31, 1975, when there were an insufficient number of men on layoff to fill vacancies in male jobs, new men were frequently hired in lieu of recalling female employes on layoff status.

41. On some occasions, when additional women's job have had to be filled to meet production schedules but men have been slated for layoff during the same week based on reduced production schedules for those departments with a larger number of men's jobs, Crown has assigned these men (who otherwise would have been laid off) to fill the women's jobs "temporarily." Female employes who would otherwise have been recalled to fill the female vacancies have simply remained on layoff.

42. Crown and Local 266 attempted to justify such departures from ordinary practice on the theory that each case was an emergency — i.e., Crown could not afford to wait for women on layoff to respond to telegrams ordering them back to work. However, there are apparently no instances of Crown assigning women to do men's jobs in similar "emergency" situations.

43. In some cases, females with many years of plant seniority who never would have been laid off except for the sex-segregated seniority system, were kept out on layoff status so long that their rights to recall, pursuant to the terms and provisions of the applicable collective bargaining agreement, expired.

44. During the period from July 9, 1969 through December 31, 1975, there were 20 such instances when female can workers were terminated from employment because they were on layoff in excess of 3 years. In no case during this period was a male can worker ever kept on layoff for so long that his recall rights expired.

45. In another twenty-two instances, between July 9, 1969 and December 31, 1975, females with substantial plant seniority felt compelled to accept "early retirement" while on layoff status to avoid expiration of recall rights. No male could be identified to elect early retirement during this period.

46. In the late 1960's and early 1970's, the effects of automation began to substantially impact upon female employment at Plant No. 1. Women's jobs were disproportionately eliminated and the successor jobs, if any, were generally higher rated and classified as men's jobs.

47. This situation resulted in women with substantial seniority being laid off for extended periods, while males with far less seniority continued to work and occasionally while new male employes were being hired.

48. As sex-segregated layoffs became more frequent and severe, female employes at Plant No. 1 began to complain to Crown and to Local 266.

49. After women began to complain about sex discrimination at Plant No. 1, officials at Crown, with the assistance of Local 266, intentionally and systematically attempted to get as many female employes as possible to sign ambiguous forms purporting to implement equal employment opportunity, but which were in fact an attempt to secure waivers of women employes' rights to equal employment opportunity and to create a "paper record" which might shield Crown from potential liability for unlawful sex discriminatory practices.

50. Crown and Local 266 attempted to show that female can workers had been extended bona fide, good faith offers of men's jobs, but had knowingly and intentionally waived their rights to such jobs by means of written "waivers."

51. The first such allegedly bona fide, good faith offers of men's jobs were made in Spring, 1970 to a group of approximately 12 women at a meeting which took place at the offices of Local 266. Those women present were asked to list or identify on a piece of paper which men's jobs they could do. No clear waiver of rights was included.

52. Despite expressions of interest in various men's jobs by women present at this meeting, the actual job offers made during or after this meeting were limited to a single job in the inspection department, given to Elizabeth McNasby.

53. Several other women were allowed to take an "inspector's test" or to work briefly as inspector trainees, but were then told they had failed the test or were laidoff based upon department seniority or sex-segregated plant seniority. (Prior to this time no man was ever administered a test when seeking an inspector position).

54. The second occasion when "waivers" were obtained was during the period beginning in or about April, 1971 and continuing on a sporadic basis, until about 1974. These "waivers" were proferred to an indetermi-

nate number of women then on layoff status or about to be placed on layoff status.

55. The "waivers" listed titles of jobs traditionally available only to men. The women were advised to check those in which they were interested and that they would thereby be relinquishing their rights to any others.

56. Another set of forms purporting to offer promotional opportunities to men's jobs was proffered during May and June of 1973 to certain women then actively employed at Plant No. 1 and neither on layoff status nor about to be placed on layoff status. These forms and the procedure used for making the offers and signing the forms were substantially identical to that utilized for the offers just described in these findings. The forms also included purported waivers of rights to positions in which no affirmative interest was indicated.

57. None of the forms utilized by Crown with the Union's acquiescence can be considered to be good faith offers of equal job or promotional opportunities.

58. The signers of these forms cannot be considered to have knowingly intended to waive their legal rights to be assigned to jobs regardless of sex.

59. Many of the women lacked sufficient formal education to fully appreciate the legal significances of the proffered "waiver" documents.

60. The offerees were materially misled as to the possible legal consequences of the documents by Crown and Local 266 officials.

61. The women involved had historically been excluded from many all male departments and were thus unfamiliar with the actual job duties of many of the listed jobs.

62. At the time of the offers, job descriptions were generally not made available to the women.

63. The women had no meaningful opportunity to discuss their decision with a lawyer, spouse or other disinterested party as they were expected to sign "on the spot" after seeing the documents for the first time.

64. The women were never offered the opportunit to retain copies of the documents which they were t sign.

65. No male employe was ever tendered such form or otherwise asked to waive his rights to jobs a Plant No. 1.

66. Many women who indicated on their form tha they were willing to accept assignment to jobs on th lists were never assigned to any of the jobs in which the indicated an interest.

67. Few of the jobs listed on the forms were actu ally available.

68. Not all male job titles in the production an maintenance unit were listed on the forms.

69. The forms did not reveal how Crown woul make use of them and what would be the duration their effectiveness.

70. The forms did not reveal what, if any, steps woman could undertake to revise the preferences sh had indicated if she subsequently changed her mind.

71. On those occasions when women indicated a interest in assignment to a particular men's job, the were frequently discouraged by officials of both Crow and Local 266.

72. Crown explained to the women that if a fema employe decided to enter into a male job in other tha her home department she would have to relinquish waive her seniority rights in her current home depa ment and begin to accrue departmental seniority in new department. (This was the same for any employee Crown, male or female, i.e. when they moved into a ne department they had to start at the bottom in that d partment).

73. As a pre-condition to placement, many of t jobs required substantial experience in lower rated d partment jobs, but women had always been exclud from some of those jobs.

74. Crown officials treated women who refused to sign the forms exactly the same as those who signed and failed to check any of the jobs thereon.

75. Crown frequently relied upon oral representations of third party fellows employes that particular women would refuse assignment to any man's job, and did not inquire further.

76. Despite self-serving claims that all females were systematically contacted to ascertain their willingness to accept assignment to men's jobs, neither Crown nor Local 266 kept any record of which women had been offered a man's job or asked to sign a "waiver" form, or when such contacts were initiated. In fact, many women were never contacted at all, and many others were spoken to only once or twice, rather than before every layoff.

77. Crown made only the most limited use of the waiver forms in connection with employment decisions after they were signed. Originals of the forms were given to Crown's attorneys sometime before 1975 and no copies were kept in the Personnel Office, nor was the information thereon transferred to any other office record.

78. With respect to those women who indicated on the forms a willingness to work male jobs, Crown rarely, if ever, consulted their forms to determine which particular jobs they had expressed interest in. Rather they were treated as being eligible for any male job to which Crown wished to assign them.

79. The process of offering male jobs to incumbent and laid off females by use of the "waiver" documents and by less formal means resulted in few woman actually achieving assignment to male jobs.

80. Elizabeth McNasby, who was successful in moving into the Inspection Department as a result of the "offer" of men's jobs to women made at the Spring, 1970 meeting, was repeatedly laid off from her inspector job thereafter because she was lowest in department seniority.

81. Upon all but the last of several occasions which waivers were proffered to McNasby she failed list any jobs in which she was interested and refused sign the forms because of her distrust of Crown's moti in seeking execution of the forms.

82. Computer analysis, as set forth in Exhibits 43 through C-46 introduced at the hearing, revealed t Elizabeth McNasby's anticipated earnings at Cro based upon her seniority and in the absence of sex crimination, would have exceeded her actual earni by the following amounts:

1971 - $4463.35
1972 - $6510.80
1973 - $6977.59
1975 - $7887.78

83. Women who were reassigned to male jobs a July 7, 1969, in accordance with the waiver scheme o any other means, were treated as if they were men seniority purposes so that to the limited extent women appeared on the male seniority list, it was ef tively an integrated list.

84. Women who were reassigned to male jobs w permitted to opt out of the integrated seniority list an back to the female list if they so chose.

85. At no time during the period July 9, 196 December 31, 1975 were more than 12 women on integrated seniority list for a particular calendar ye

86. During 1971, while at least 250 females w employed or possessed employment rights at Plant N in the production and maintenance unit, a total of 5 of all female employes, were on the integrated seni list. Only 1 of the 5 was on the integrated list fo months.

87. During calendar year 1972, while at least females were employed or possessed employment ri at Plant No. 1 in the production and maintenance a total of 6, less than 3% of all female employes, appe

on the integrated seniority list. Only 3 of the 6 were on the integrated list for 12 calendar months.

88. During calendar year 1973, while at least 180 females were employed or possessed employment rights at Plant No. 1 in the production and maintenance unit, a total of 10, slightly more than 5% of all female employes, appeared on the integrated seniority list. Only 6 of the 10 appeared on the integrated list for the entire 12 month period.

89. During calendar year 1975, while at least 118 females were employed or possessed employment rights at Plant No. 1 in the production and maintenance unit, a total of 12, slightly more than 10% of all female employes, appeared on the integrated seniority list, all for the entire calendar year.

90. Those female employes who attained integrated seniority status for only part of any calendar year were relegated to female seniority status for all periods during which they did not appear on the integrated list.

91. All remaining female employes had only segregated female seniority status.

92. From July 9, 1969 to December 31, 1975, no more than 18 of the 352 female production and maintenance unit employes have ever been assigned by Crown to perform one or more of the men's jobs.

93. Whenever one of these 18 workers were performing a man's job, her plant seniority and department/shift seniority cards were retained on the female sections and the department/shift and plant seniority boards with a red tag affixed.

94. A comparison of job titles worked during 1970 at Crown's Plant No. 1 in the production and maintenance unit with the job titles worked during 1975 discloses little progress toward ending the pattern of segregation. In 1970, of 104 job titles worked, 61 were all male and 33 were all female. Only 10 job titles, or 9.6%, were integrated. By 1975, of 76 job titles worked, 43 were all male, 19 all female, and 14, or 18.4%, integrated.

95. An examination of employe incumbe as of December 31, 1975, by Home Departm closes a pattern of total exclusion of female from 4 departments encompassing 112 out of duction and maintenance jobs.

96. Department 29, the Drawn and Iron ment ("D&I") due to its advanced technology, the fastest growing department at Plant No. began operation in the early 1970's. (Because o use of departmental seniority rapid departmer virtually insures an employe rapid promotion department, especially a new department.)

97. Initially, there was no posting to anno availability of positions in Department 29. were transferred into the new department ba subjective appraisals of their experience a made by Crown's Personnel Department wi from Local 266.

98. It was not until October 28, 1974 th made any attempt to offer positions in Departm female employes working at Plant No. 1 and October 30, 1974 that Crown informed son employes on layoff status of the availability of on the D&I lines.

99. Even on those earlier occasions wh offered traditionally male jobs to certai employes, jobs on the D&I lines were never in the list of jobs allegedly available.

100. At the time of hearing, 44 male a female employes were working in Department first shift. The two females had been tempora in the department a few days before the publ in these cases began. No home department em Department 29, first shift were female.

101. As of December 31, 1975, the ave seniority for all males employed between Ju and December 31, 1975 was 20.3 years. Th plant seniority for females was 28.8 years.

102. The employment work force profile at Crown shows that, despite the higher average seniority of female employes, females were disproportionately clustered in the lower rated and lower paid job classifications.

103. Positions in the production and maintenance unit at Crown are compensated in accordance with a system of job codes as set forth in the applicable collective bargaining agreement ranging from the lowest paying Code 4 jobs to the highest paying Code 35 jobs.

104. As of December 31, 1975, the mean job Code for males was 23.8 and the median was 23.0. For females the mean was 13.7 and the median was 11.0.

105. As of December 31, 1975, statistical analysis revealed that the mean job code would be 29.0 for females, 18.9 for males, if attainment were based solely on plant seniority. If based solely on department/shift seniority, mean expected job code attainment would be 19.5 for females, 21.9 for males.

106. From July 9, 1969 through December 31, 1975, men have been allowed to perform overtime work on both men's job and women's jobs while women have been restricted to a portion of the overtime available on women's jobs.

107. During calendar year 1971, female employes earned on the average $3476.00 per employe less than similarly situated male employes.

108. During calendar year 1972, female employes earned an average of $2954.00 per employe less than similarly situated male employes.

109. During calendar year 1973, female employes earned an average of $3176.00 per employe less than similarly situated male employes.

110. During calendar year 1975, female employes earned an average of $3976.00 per employe less than similarly situated male employes.

111. After July 9, 1969, responsible officials of Crown and Local 266 knew or should have known of the

prohibitions against sex discrimination in
contained in state and federal law.

112. Some Crown managerial and Lo
cials held stereotypic preconceptions and di
attitudes toward female employes, particul
spect to female abilities to perform "stre
"dirty" -type jobs. These preconceptions and
fected employment related decisions durin
July 9, 1969 to December 31, 1975.

113. At all times material to this litiga
tion and maintenance employes at Crown's
were represented for purposes of collective b
respondent Local 266.

114. At all times material to this litig
and Local 266 were signatories to collectiv
agreements covering production and mai
partments in Plant No. 1.

115. At all times material to this
employes covered by the collective barga
ments between Local 266 and Crown were
ter an initial 30 day grace period, to join L
initiation fees and dues, and to maintain un
ship as a condition of continued employme

116. Officials and agents of Local 26
times aware of the sex discriminatory acts
of Crown.

117. Union officials had access to a
the transfer and layoff lists every week in o
mine whether employes were being proper
and laid off. They also had access to the
each week.

118. Local 266 has always received
the recall rights of employes at Plant No.

119. Representatives of Local 266 ha
knowledge that weekly "manning" schedu
mitted by each department foreman on a s
basis.

120. Subsequent to July 9, 1969, Local 266 neg
tiated three new collective bargaining agreements wi
Crown covering workers at Plant No. 1, effective respe
tively in April, 1970, April, 1973, and April, 1976. (
none of these occasions did Local 266 make any attem
whatsoever to obviate through bargaining or to elimina
or reduce sex discrimination at Crown or to mitigate
effects on female members of Local 266.

121. Local 266 persistently failed to enforce t
plant seniority provision of the collective bargaini
agreement despite full knowledge that Crown's brea
of that provision, particularly with respect to layoffs a
recalls, consistently and disproportionately disadva
taged female employes.

122. At no time has Local 266 filed any grievan
urged any of its members to file a grievance, initiat
lawsuit, complained orally or in writing to Crown,
taken any other action of any sort whatsoever relatec
enforcement of the non-discrimination provision of
collective bargaining agreement despite full knowle
of the pattern and practices of sex discriminatory beh
ior being engaged in by Crown.

123. At all times since July 9, 1969 Local 266
effectively refused to investigate or prosecute the num
ous grievances of its female member alleging sex
crimination at Crown.

124. The problem of female members of Local
being improperly laid off was well known to the Un
and discussed at shop steward's meetings. Howe
nothing was done about it, even though grievance w
filed.

125. Approximately 100 female members of L
266 signed a written grievance on or about Novembe
1969 complaining about continuing sex discriminatio
employment at Plant No. 1.

126. After the grievance was signed, it was give
Pasquale Coia, head shopsteward for delivery to Her

Tedeschi, President of Local 266, but Local 26
further meaningful action regarding the griev

127. At all times since July 9, 1969, the
in the applicable grievance procedure has bee
tion. From that time to the present, Local 266
taken any case involving any woman to
though complaints involving men have been t
bitration.

128. Local 266 has been governed by t
tution and Ritual of the Sheet Metal Worker
tional Union, AFL-CIO at all times since 1966
stitution requires that the employes in layoff
given an opportunity to use withdrawal cards
avoid reinstatement fees each time they are
work. Local 266, contrary to this requirement,
given its members an opportunity to utilize w
cards. Instead, at all times material to this
whenever employes were in layoff at Crown's
1, they were required to pay monthly dues or
to pay a "reinstatement" fee of between $15
Local 266.

129. Since female members of Local 26
off proportionately with greater frequency
members, the brunt of this particular policy
heavily on the female members.

130. At all times from July 9, 1969 or e
December 31, 1975 officials of Local 266 ha
and in concert with Crown worked to maintai
criminatory practices in effect at Crown, inc
sex-segregated system of job classification p
Plant No. 1, and have sought to insure that la
fer, promotion and recall were done strict
segregated plant and department seniority.

131. Local 266 oficials have active
Crown management in its attempts to
employes at Plant No. 1 to sign documents
waiving their rights to equal employment o
They personally reviewed and approved forms

to obtain uninformed waivers of these rights and they participated in meetings on numerous occasions where these forms were used.

132. Assertions by officials of Local 266 that they had helped to enforce the sex-segregated seniority system and sex-segregated job classification system only because their female members demanded it were self-serving and not credible.

CONCLUSIONS OF LAW

1. The Pennsylvania Human Relations Commission (hereinafter "Commission" or "PHRC") has appropriately exercised jurisdiction over the parties to and the subject matter of the complaints upon which these hearings in Docket Nos. E-4027 and E-4249 were convened.

2. Crown Cork and Seal (hereinafter "Crown") at its Plant No. 1 is an employer within the meaning of §4(b) of the Pennsylvania Human Relations Act (hereinafter the "PHRA").

3. Sheet Metal Production Workers' Union, Local 266 (hereinafter "Local 266") is a labor organization within the meaning of §4 (d) of the PHRA.

4. All procedural prerequisites to a public hearing as set forth at §9 of the PHRA have been satisfied. Investigation, findings of probable cause and attempted conciliation of these charges were all completed prior to this litigation.

5. The Commission initiated complaint filed on December 22, 1970 at Docket No. E-4027 did not state alleged violations of the PHRA with sufficient particularity as required by law and it was therefore a defective complaint and a nullity.

6. The defective complaint filed at Docket No. E-4027 on December 22, 1970, being null and void, did not toll the running of the PHRA 90 day statute of limitations.

7. The complaint of Elizabeth McNasby filed on June 11, 1971 at Docket No. E-4249 is sufficiently particular to constitute a valid complaint with respect to the allegation related to McNasby individually. It is not sufficiently particular, however, to constitute a valid complaint with respect to the allegations relating to similarly situated females. With respect to these latter allegations the complaint is accordingly null and void. It is thus not valid as a class action complaint and does not toll the running of the statute of limitations with respect to any allegations other than that relating to McNasby individually.

8. The amended complaint filed by the Commission on October 27, 1975 at Docket No. E-4027 is sufficiently particular so as to constitute a valid complaint under the PHRA. Being valid in its own right, it is not rendered invalid by virtue of the mere technicality that it is labelled an "amended" document nor by virtue of the fact that it purports to amend a mere nullity; i.e. the original Commission initiated complaint of December 22, 1970.

9. The amended complaint of October 27, 1975, albeit a valid complaint in its own right cannot relate back to the null and void original complaint of December 22, 1970. The amended complaint is thus limited by the statute of limitations to addressing alleged violations of the PHRA which occurred within the period commencing on July 30, 1975, i.e., 90 days before the October 27, 1975 filing. All alleged illegalities pre-dating July 30, 1975 are not redressable by the amended complaint as they are barred by the statute of limitations.

10. Allegations concerning all of the 13 individual complainants named in the amended complaint at Docket No. E-4027, except for Theresa Reed, relate to occurrences pre-dating July 30, 1975. None of the named complainants other than Theresa Reed (and Elizabeth McNasby at Docket No. E-4249) had any employment relationship with Crown after 1974. Accord-

ingly, all allegations of the individually named complainants other than Reed and McNasby are barred by the statute of limitations.

11. Although violations of the PHRA pre-dating July 30, 1975 (except those relating to McNasby), are not redressable in this action, evidence of historic patterns and practices of sex discrimination committed by Crown and Local 266 is relevant to this case and was properly received by the Commission hearing panel. Furthermore, nothing in law prohibits the Commission from making Findings of Fact and Conclusions of Law concerning pre-July 30, 1975 violations so long as those violations are not made the subject of any ordered remedy.

12. Delays in the processing of this matter from the December 22, 1970 filing of the original complaint to the October 27, 1975 filing of the amended complaint, albeit attributable primarily to PHRC staff, do not give rise to a defense of laches and have not deprived Crown or Local 266 of due process of law. Neither respondent has shown any substantial prejudice to have resulted from the delays and more significantly it has been determined that the statute of limitations proscribes any remedy under the amended complaint for violations pre-dating July 30, 1975.

13. Notwithstanding the lengthy delay between the filing of her complaint at Docket No. E-4249 on June 11, 1971 and the commencement of a hearing upon these consolidated cases on October 30, 1978, Elizabeth McNasby was faultless with respect to that delay, is not guilty of laches, and thus redress of her claim is nor barred by reason of the delay.

14. The delay between the October 27, 1975 filing of the amended complaint and the October 30, 1978 commencement of the public hearing was not exclusively attributable to the PHRC and accordingly the defense of laches raised by both respondents cannot be sustained.

15. Section 9 of the PHRA which authorizes the Commission to initiate complaints of unlawful discriminatory practices implicitly authorizes complaints on behalf of classes of aggrieved persons alleging patterns and practices of uniawful discriminatory conduct. Commission initiated complaints are not restricted to allegations on behalf of individual discriminatees.

16. At all times from July 9, 1969 to December 31, 1975, Crown engaged in a pattern and practice of discrimination based upon the sex, female, of applicants and employes in hiring, job assignment, job transfer, compensation, layoff, and recall from layoff, on a continuing basis.

17. Respondent Crown's failure to recruit and hire females while recruiting and hiring males throughout the period from July 9, 1969 to December 31, 1975 constitutes a continuing pattern or practice of discrimination on the basis of sex in violation of §5(a) of the PHRA 43 P.S. §955(a).

18. Respondent Crown's actions and continuing pattern and practice of assigning females to jobs based upon their sex, and in establishing and maintaining a system of male jobs and female jobs, constitutes discrimination on the basis of sex in violation of §5(a) of the PHRA, 42 P.S. §955(a).

19. Respondent Crown's failure to award overtime work to female employes on the same basis as it was awarded to male employes constitutes a continuing pattern and practice of discrimination on the basis of sex in violation of §5(a) of the PHRA, 43 P.S. §955(a).

20. By establishing and maintaining sex segregated seniority rosters, laying off female employes with greater plant seniority than males, recalling laid off males with less seniority while females on layoff status were not recalled, hiring males while females remained in layoff status, Crown has engaged in a continuing pattern and practice of sex-discrimination in violation of §5(a) of the PHRA, 43 P.S. 6955 (a).

21. The seniority system utilized by Crown and Local 266 to the extent it employed and continues to employ sex-segregated plant, department, and shift seniority had and continues to have a disparate pervasive unlawful impact upon female employes at Plant No. 1 in the production and maintenance unit.

22. The seniority system as administered by Crown and Local 266 in the context of layoffs, and recall from layoff status had and continues to have a disparate pervasive unlawful impact upon female employes at Respondent Crown's Plant No. 1 in the production and maintenance unit.

23. During the period July 9, 1969 to December 31, 1975, the sex-segregated job classification and seniority systems employed by Crown and acquiesced to by Local 266 disproportionately disadvantaged females employes with respect to job assignment, job transfer, compensation, layoff, and recall from layoff. The present continuing effects of these past practices would be unlawfully discriminatory even in the absence of renewed acts of discrimination.

24. The sex-segregated job classification and seniority systems historically employed by Crown inhibited the movement of Elizabeth McNasby upward through the production and maintenance ranks at Crown as occurred with other women. This left her with artificially low department seniority in 1971. Thus, continued layoffs she suffered in her inspection position were illegal consequences of a seniority system which disproportionately disadvantaged women and are therefore remediable.

25. The sex-segregated job classification and seniority systems employed by Crown and acquiesced to by Local 266 were justified by neither any bona fide occupational qualification nor by any business necessity.

26. The seniority system, to the extent that it utilizes seniority measures other than plant seniority and to

the extent that it perpetuates the effects of past disc
inatory practices, is unlawful.

27. Respondent Crown's current system
sex-segregated job classification and plant seniori
unlawful *per se* and must be integrated for all purp

28. Respondent Crown's current system of de
ment and shift seniority is unlawful in its effects and
not be used as a basis for job advancement, layof
recall to employment unless plant seniority among
peting employes is equal.

29. While Crown and Local 266 allege, in e
that many female employes knowingly and intentio
waived their rights to equal employment opportu
such rights cannot be prospectively waived.

30. The alleged "waivers" proferred as a defen
Crown and Local 266, were not informed, knowing
ers nor were they legally binding.

31. Local 266 has a duty to afford equal repr
tation to its female members and to accord them fu
equal membership rights.

32. Local 266 repeatedly discriminated again
male employe members:

(i) by failing to process the grievance of fe
members complaining of the sex discriminator
and practices of Respondent Crown;

(ii) by improperly encouraging and misle
many female members to sign alleged waiv
their rights to equal employment opportunity;

(iii) by failing and refusing to enforce the
discrimination provision of its applicable coll
bargaining agreements with Crown;

(iv) by failing to protest against or bargain
end to the illegal practices of Respondent C
which adversely affected female Local 266
bers; and

(v) by aiding and abetting Respondent Crown in its continued pattern of employment discrimination.

These acts and policies constitute sex discrimination in violation of §5(c) and §5(e) of the PHRA, 43 P.S. §955(c) and (e).

33. Respondent Local 266 violated the PHRA by requiring the payment of dues while employes were in layoff status and/or by requiring the payment of reinstatement fees as a condition of obtaining reinstatement to employe status from layoff. These requirements, in the context of Crown's sex-segregated layoffs, disproportionately disadvantaged females in violation of §5(c) of the PHRA, 43 P.S. §955(c).

34. Local 266 has contended that female employes failed to complain or file grievances concerning sex discrimination and generally failed to avail themselves of the union's participatory processes whereby they could have made counterdiscrimination suggestions relating to future union collective bargaining efforts. Even to the extent that these contentions are true, female employes have not thereby waived any rights to nondiscriminatory treatment and are not thereby estopped from raising a challenge to Local 266's discriminatory conduct.

35. A proper element of the relief to be awarded is back pay for each eligible female discriminatee equal in gross amount to the differences between that which she actually earned from employment at Crown or elsewhere during the period from July 30, 1975 to December 31, 1975 and that which she would have earned at Crown during the same period had she been extended the equal employment opportunities to which she was entitled under the PHRA.

36. A similar award is appropriate for Elizabeth McNasby dating from the filing of her complaint on June 11, 1971 to December 31, 975.

37. The inability of the hearing panel to deter from the record the precise amount of back pay ap priately awardable to Elizabeth McNasby and mem of the class of discriminatees with redressable claims der the amended complaint at Docket No. E-4027 not preclude the awards of back pay set forth in th tached Final Order as those awards are based upon sonable calculations supported by the evidence.

38. Females who, should they now be assign jobs previously classified as male jobs, would other be subject to wage reductions because of Crown' partmental or shift seniority system are legally entitl have their current wage rates "red-circled" or m tained at a rate equivalent to the rate a woman c attain through the use of her plant seniority until time as she rises within an integrated department to code level with the appropriate corresponding or h wage rates.

39. A proper element of relief is the required tution of a bona fide, good faith and effective tra program to enable female employes to enter jobs an partments from which females have previously bee cluded. Under the circumstances, a step-by-step p dure of learning the necessary skills for advance within departments by on-the-job experience at level jobs would unfairly delay the discriminatees m ing their rightful place within the hierarchy of jo Plant No. 1 unless it is demonstrated that experien the lower rated job is a business necessity.

OPINION

I. Background

On December 22, 1970 the Pennsylvania H Relations Commission (hereinafter "PHRC" or " mission"), by its Executive Director, Homer C. initiated a complaint at Docket No. E-4027 again

spondent, Crown, Cork and Seal Company, Inc. (hereinafter "Crown"), and Respondent Sheet Metal Workers Union, Local No. 266 (hereinafter "Local 266") alleging that both respondents had committed acts of unlawful sex discrimination in violation of the Pennsylvania Human Relations Act (hereinafter "PHRA"), Act of October 27, 1955, P.L. 744, as amended, 43 P.S. §951 et seq. Another complaint of unlawful sex discrimination was lodged against Crown and Local 266 at Docket No. E-4249 by Elizabeth McNasby on June 11, 1971.

The PHRC initiated complaint and the McNasby complaint were consolidated for purposes of administrative processing and some investigation took place through early 1973. Thereafter it appears that there was virtually no activity upon the consolidated cases until mid-1975 when PHRC staff sought and received affidavits from 12 former and 1 incumbent female Crown employes relating to the sex discrimination allegations.

In part based upon these affidavits the Commission, again by its Executive Director, initiated an amended complaint at Docket No. E-4027 on October 27, 1975. Investigation then proceeded until a finding of probable cause was made by PHRC staff on April 19, 1976. (Technically this was an amended finding, several findings of probable cause having already been made prior to amendment of the complaint.)

Conciliation efforts, as required by §9 of the PHRA, were undertaken but failed and accordingly a public hearing was ordered. Protracted pre-hearing maneuvering and collateral litigation delayed commencement of the hearing until October 30, 1978. Thereafter 37 days of hearings were held ending on June 17, 1980 and resulting in a hearing record of over 6000 pages.

The hearings were conducted before a panel of Commissioners consisting of Alvin E. Echols, Junior, Esquire, presiding, and Commissioners Doris M. Leader, Benjamin S. Lowenstein, Esquire, and Robert Johnson Smith. The case on behalf of the complainants was pre-

sented by PHRC Assistant General Counsel, Jan
Keeney, Esquire and PHRC General Counsel, Rob
Mirin, Esquire. Respondent Crown was represent
Stephen P. Gallagher, Esquire and Respondent
266 was represented by Mark P. Muller, Esquire.
ing as legal advisors to the hearing panel were F
Assistant General Counsels James D. Pagliaro, Es
and Benjamin G. Lipman, Esquire.

Extensive Findings of Fact and Conclusions o
having been submitted in these consolidated case
Opinion will not attempt to reiterate their essence i
rative form but will undertake only to clarify the u
lying rationale for aspects of the Commission's de
and Final Order which may not be self-evident.

Additionally, the Commissioners wish to
known their view that although procedural defici
in the processing of this matter have precluded
remedy for all the wrongs found to have been comm
these cases nevertheless present one of the most b
patterns of sex discriminatory employment practic
has ever been brought to this Commission's atte
Practices concerning hiring, transfer, promotion
pensation, layoff, and recall from layoff were all t
by extremely antiquated and stereotyped percepti
female workers manifest by Crown and Local 266
erating to the detriment of women employees.

II. Limitations on Action

A. *Insufficiency of the original complaint*

The December 22, 1970 complaint initiated
PHRC against Respondents Crown and Local 266
pages long. The entirety of its substantive alle
was as follows:

> On or about to wit, December 22, 1970 th
> plainant alleges that the respondent compa
> gages in unlawful employment practices wh

discriminatory with respect to female employees, because of their sex, in hiring, assignment, seniority, transfer, salary, overtime, promotion, denial of training, and layoff. It is further alleged that the respondent Union concurs in and aids and abets the discriminatory practices of the respondent Company.

In the case of *PHRC vs. U.S. Steel Corp.*, 325 A.2d 910 (1974), the Pennsylvania Supreme Court reviewed a similarly brief, generalized allegation of classwide discrimination and concluded that by any reasonable standard the complaint was so deficient in particularly that its averments failed to provide the respondent with adequate notice as to the wrongs with which it was charged.

Unfortunately, the same is the case here. The original Commission initiated complaint at Docket No. E-4027 is so similar to the complaint found to be defective in *U.S. Steel* that there is no reasonable basis upon which we can distinguish it. Accordingly, the complaint must be held to be null and void.

B. *Sufficiency of the Amended Complaint*

On October 27, 1975 the PHRC, by its Executive Director, filed a 34 page amended complaint alleging in very specific detail a pattern and practice of discrimination by Respondents Crown and Local 266. The allegations related to several specified classes of females, including a group of 13 named individuals, 1 incumbent and 12 former Crown employees.

The amended complaint certainly satisfies the particularity requirements for complaints set forth in *U.S. Steel* and would seem to be sufficient in its own right to constitute a complaint under §9 of the PHRA, 43 P.S. §959. The mere fact that the label on the document includes the word "amended" we do not find a basis for discrediting it. Furthermore, the fact that the amended complaint purports to amend an original complaint which we have already held to be a nullity does not con-

vince us that the amended complaint is any
a complaint in its own right. Thus, we ha
determined to treat the amended complaint
nal complaint.

C. Statute of Limitations

The PHRA, at §9, 43 P.S. §959, requir
complaint filed pursuant to this section mu
within ninety days after the alleged act o
tion." The amended complaint filed at
E-4027 purports to apply to discriminatory
the period July 9, 1969 (when the PHRA w
to prohibit sex discrimination) through an
beyond the date the amended complaint w
tober 27, 1975.

We believe that §9's statute of limitati
the amended complaint to redressing griev
a much more narrowly circumscribed tim
ticularly, to allegations of discriminatory a
curred no more than 90 days prior to the fi
plaint. The question thus arises:

> Is the amended complaint restricted t
> ring within 90 days of its filing or does
> to the filing of the original complaint th
> to redress allegations of discriminator
> occurred within 90 days of the Decem
> filing of the original complaint?

As previously indicated, the amended
tually ignores the statute of limitations an
apply to conduct dating back to July 9, 1
however, that this is impermissible a
amended complaint, filed October 27, 197
dress discriminatory conduct occurring
days prior to its filing.

We have made this determination b
well-established doctrine, adhered to in

and elsewhere, that an amendment to a complaint cannot revive a time barred claim and cannot introduce a new cause of action after a statute of limitations has expired. Thus, here, where the original complaint is a nullity, fails to state a viable cause of action, and fails to toll the running of the statute of limitations, the amended complaint, in effect stating a new cause of action, cannot relate back to the original date of filing. Instead, it is restricted to redressing allegations of discriminatory acts occurring on or after July 30, 1975 (90 days before the October 27, 1975 filing of the amended complaint).

(The amended complaint characterizes most of Respondents' discriminatory acts as being of a continuing nature. And while the evidence suggested the correctness of this contention, little in the record affords us a sufficient basis upon which to formulate specific monetary relief beyond the date of December 31, 1975. Thus, notwithstanding an evidentiary picture manifesting blatant sex discrimination dating back to the July 9, 1969 enactment of the sex discrimination prohibitions in the PHRA and continuing up through the dates of these hearings in 1978-1980, the statute of limitations and the state of the record restrict much of the remedy we have ordered to the period July 30, 1975 to December 31, 1975.)

D. *The 13 individually named complainants*

During the recommencing of investigation of this matter by PHRC staff in mid-1975, affidavits of 13 women were sought and received. The 13 included 1 incumbent and 12 former Crown employees. Their affidavits were attached to the October 27, 1975 amended complaint and they were thereafter treated as individually named complainants.

Unfortunately, all but one of the women, Theresa Reed, had no employment relationship with Crown nor any membership relationship with Local 266 after 1974

As none except Reed can allege victimizatio
inatory practices on or after July 30, 1975 t
limitations thus bars their claims.

E. *The complaint of Elizabeth McNasb*

On June 11, 1971 Elizabeth McNasby
vidual complaint against Crown and Local
in relevant part "that the respondents con
lay-off of the complainant because of her
and have prevented her, as well as all other
enjoying equal job opportunities at Crown
Company."

Notwithstanding its brevity, we have
that the specific references in the complai
ular act of layoff is sufficient to withstand th
requirement for complaints set forth in
case. Accordingly, we hold that the McNas
is viable for purposes of redressing her ind
ance against the respondents. With respe
gation on behalf of all other females, howe
a different view.

In the case of *PHRC v. Freeport Are*
trict, 359 A.2d 727 (1976), the Pennsylva
Court reviewed a sex discrimination comp
by an individual female on behalf of herse
larly situated females. The court held tha

> . . . PHRC may order affirmative reli
> other than the named complaint (sic)
> complainant alleges that such other
> been affected by the alleged discrimina
> and (2) such other persons entitled to
> described with specificity. 359 A.2d a

We do not find McNasby's allegation
"all other females" sufficient to constitute
complaint as measured by the standards
Steel or Freeport. Nothing in her allegati
specific identification of "such other pers

relief" as required by *Freeport*. Furthermore, the allega
tion that ". . . all other females (have been prevented
from enjoying equal job opportunities at Crown Cork an
Seal Company" is totally lacking in the degree of partic
ularly required by *U.S. Steel* to give respondents notice
the charges against them.

Accordingly we find the McNasby complaint suff
cient to toll the running of the statute of limitations wit
respect to her individual allegations of discriminatio
but failing to state a cause of action on behalf of the cla
of other female employes at Crown it does not toll th
running of the statute as to the classwide allegation.

F. *Initiation of a pattern and practice complai*
by the PHRC

In its post-hearing brief Crown challenges the a
thority of the Commission to initiate a complaint base
upon an alleged pattern and practice of discriminatio
Nothing in logic or law supports this view.

The PHRA at §9, 43 P.S. §959 states in relevant pa

> Any individual claiming to be aggrieved by an
> leged unlawful discriminatory practice may mak
> sign and file with the Commission a verified co
> plaint, in writing, which shall state the name a
> address of the person, employer, labor organizati
> or employment agency to have committed the u
> lawful discriminatory practice complained of, a
> which shall set forth the particulars thereof and co
> tain such other information as may be required
> the Commission. The Commission upon its own
> itiative or the Attorney General may, in like mann
> make sign and file such complaint.

No reasonable inference can be drawn from this la
guage that there exists a limitation on the type of Co
mission initiated complaint permitted under §9
PHRA.

The apparent intention of this legislative inventio
i.e. the Commission initiated complaint, is to attack th
type of broad based discriminatory conduct that is n
manifest by single isolated incidents (which are mo
likely to result in individual complaints). Th
Commonwealth's interest in eradicating unlawful di
crimination, above and beyond the interest of individu
victims, is vindicated through Commission initiate
charges. This interest, of necessity will at times be d
rected at patterns and practices of discriminatory co
duct.

Finally, although the issue raised by Crown has a
parently never before been addressed by the state's a
pellate courts, the continued approval of PHRC Final O
ders arising out of Commission initiated pattern a
practice complaints suggests that the courts do not agr
with Crown's view. See, for example, *PHRC vs. Chest
School District*, 233 A. 2d 290 (Pa. Sup. 1967) and *PHR
vs. Chester Housing Authority*, 327 A. 2d 335 (Pa. Su
1974).

G. *The laches defense*

Both respondents assert the doctrine of laches as
defense to their conduct in these cases. The doctrine pr
hibits a party guilty of inexcusable delay from maintai
ing an action against an opponent who has been su
stantially prejudiced by the delay. We find the doctri
applicable here.

It is certainly correct that PHRC staff had sole co
trol of the pace at which this matter moved toward r
olution from the time the original complaint was filed
1970 until pre-hearing preparation began in earnest
1976. It is equally true that the Commission had the st
utory obligation to proceed expeditiously with the ca
and did not. Nonetheless, neither respondent has be
significantly prejudiced by the Commission's slowne

Most important in this regard is the fact that all charges against respondents pre-dating July 30, 1975 (except those relating to Elizabeth McNasby individually) have been dismissed due to statute of limitations problems. And while the Commission has relied in large part in reaching its holding upon evidence of discriminatory acts which pre-dated July 30, 1975, neither respondent was prejudiced by reliance upon such evidence.

From the initiation of the original complaint to the time of the hearing neither respondents' conduct was in any way affected by the pendency of this litigation. In fact, their discriminatory practices, based upon antiquated and blatant stereotypes, were maintained in precisely the same manner as they always had been.

Respondents encountered no meaningful difficulty in producing their evidence because of the delay. Certain Crown payroll records from 1974 were lost and unavailable but this was obviously due to Crown's own neglect as records concerning 1971-1973 were readily available.

The principal element in the defense offered by both respondents concerned securing and use of "waivers" from female employes. Although Crown was unable to produce all the waivers it claimed to have secured over the years this could not affect our decision, as, for reasons set forth later in this Opinion, we have rejected the legitimacy of the entire waiver process.

Local 266 officials and other witnesses frequently claimed lapse of memory when testifying and understandably so. Nevertheless, the crucial elements of these cases and the primary bases for our decision, namely statistics and the waiver process, were well presented by all parties. We can think of no place in the record where there is an indication of lapse of memory, unavailability of witnesses, or loss of documents which could have meaningfully altered our view with respect to these two subjects.

As to delays attending the processing of these m
ters after filing of the amended complaint in 1975
view those as due at least as much to respondents' c
duct, including Crown's initiation of collateral litigat
as to PHRC staff's. And with respect to Elizab
McNasby, she, of course, can in no sense be deer
guilty of laches as she had no control whatsoever over
pace at which this litigation unfolded.

III. Evidence of Discriminatory Practices

A. *Theories of discrimination*

Employment discrimination litigation, particul
that arising under Title VII of the Civil Rights Ac
1964, 42 U.S.C. §2000e et seq. (hereinafter "Title V
has resulted in judicial formulation of 2 basic discr
nation models. The first, disparate treatment, is the m
self-evident form of discriminatory conduct. It is the
ple situation where an individual is less favorably tre
than others due, at least in part, to consideration of s
prohibited characteristic such as race, age, religion
tional origin, etc. It is plainly unlawful u
anti-discrimination laws. *McDonnell Douglas Corp
Green*, 411 U.S. 792 (1973).

The second discrimination model, and the so
what more complicated one, is that of disparate imp
This involves practices which are fair in form but
criminatory in their operation, i.e., which appear t
neutral but which adversely affect one protected g
more than another. Disparate impact discriminatior
been expressly declared to be unlawful under both
VII, *Griggs vs. Duke Power Co.*, 401 U.S. 424 (1971)
under the PHRA, *General Electric Corp. vs. PHRC*
A. 2d 649 (Pa. Sup. 1976).

In these cases we find both forms of discrimin
to have occurred. The detailed Findings of Fact and
clusions of Law which accompany this Opinion m

unnecessary a lengthy discussion of our reasoning. However, it is clear that Crown's failure to hire women during the period 1969-1975 and its sex-segregated system of job classification constitute different, disadvantageous treatment on the basis of sex, i.e., unlawful disparate treatment. And statistical and other evidence demonstrate that the sex-segregated seniority system at Crown had an unlawfully disparate impact upon females with respect to earnings, layoff, and recall from layoff.

B. *Statistics*

The courts of this Commonwealth and those of the nation have consistently relied upon statistical proof as a means of assessing compliance with anti-discrimination laws. *International Brotherhood of Teamsters v. U.S.*, 431 U.S. 324 (1977), *Hazlewood School District vs. U.S.*, 433 U.S. 299 (1977), *PHRC vs. Chester Housing Authority*, 327 A. 2d 335 (Pa. Sup. 1974), *PHRC vs. Chester School District*, 233 A. 2d 290 (Pa. Sup. 1967). This approach is predicated upon a recognition that discrimination is frequently a systemic condition related to wide spread practices rather than a series of isolated events.

Substantial statistical disparities between existing population distributions and the distribution that might be expected in the absence of discrimination (e.g., percentage of women in a work force compared to percentage of qualified women in available labor pool) will generally be regarded as prima facie evidence of discrimination. *Castaneda vs. Partida*, 430 U.S. 482 (1977), *Hazlewood*, supra, *Chester Housing Authority*, supra. Unrebutted statistical evidence demonstrating an unusually skewed distribution will cause a court to conclude that chance alone cannot account for the disparities and that discrimination has occurred.

Much statistical evidence was introduced in support of the complaintants' cases at hearing. The disparities reflected by these statistics were substantial and indi-

cated a profound disadvantage experienced by femal
Crown with respect to hiring, compensation, promo
layoff, and recall from layoff. We find this statistica
idence alone to be sufficient to establish a prima
case of discrimination.

C. *Evidence of historic practices*

Much of the evidence introduced at hearing an
lied upon by the Commission in formulating this
sion concerned historic discriminatory practices w
had their origins prior to July 30, 1975. Crown's
segregated systems of job classification and sen
were the subject of much of the evidence introduce
the statistical reflections of the consequences of
systems, in terms of layoff, earnings, etc., related oft
the entire period July 9, 1969 to December 31, 1975
evidence thus failed to distinguish acts and c
quences that were within and that were not withi
statute of limitations. A question arises as to the a
priateness of the Commission's consideration of, rel
upon, and making findings concerning events ou
the statute of limitations.

In the case of *General Electric Corp. vs. PHRC*
A.2d 649 (1976), the Pennsylvania Supreme cou
viewed the admissibility of evidence of discrimin
concerning conduct not merely outside the statu
limitations, but even predating the enactment o
PHRA's prohibition against sex discrimination.
court ruled that such historic evidence, although i
not give rise to a finding of redressable illegalities
still be admissible under some circumstances. And
circumstances are clearly present in this case.

The *General Electric* court observed that em
ment practices which are apparently neutral can
times operate to "freeze" the effect of past discrimin
conduct, thus perpetuating into the present the i
of the past discrimination. Even if the prior discri

tory practice has been abandoned, the court found that this perpetuation of discriminatory effects can cause the present neutral practices to be deemed discriminatory in their own right. Accordingly evidence of the past practice might be admissible.

In the cases at bar, Crown's sex-segregated job classification and seniority systems remained in place even at the time of the hearing. (They were gradually being removed by virtue of non-applicability to new female employes and the "option" of integrated seniority offered to more senior female employes, discussed infra. But for the overwhelming majority of women, sex-segregation at Crown was the rule.)

Nevertheless, Crown's sex segregation policies can be analogized to the abandoned discriminatory practices discussed in *General Electric*, because even to the extent that sex segregation was breaking down, its historic place in employment decision making at Crown continued to have effects.

Thus, for example, women who had long been limited in advancement due to sex-segregated departments could not afford to give up department seniority and transfer to integrated departments when that option became available. By virtue of the dual seniority system, segregation, and employer-fostered psychological barriers, women were "locked" into their low-paying, layoff-prone positions even when Crown began the slow process of dismantling overt segregation.

> As the court said in *General Electric*, 365 A.2d 659-660:
>
> In sum, we hold that if an employer has in fact engaged in past discriminatory actions, and if the impact of these actions is perpetuated by the employer's otherwise neutral present employment policy, then that employer's present policy may be held to be in violation of Section 5(a) of the PHRA.

The same is applicable here.

IV. Defenses

As indicated in the preceding section of this C
complaintants have clearly succeeded in establi
this matter a prima facie case of employment d
nation. With statistical evidence they have demo
disparate treatment of females in hiring. (Resp
have effectively offered no defense to this chang
have shown by testimonial and other evidence
parate treatment occurred with respect to job
ment in that women were inevitably initially ass
lower paying "women's job." And by testimonia
mentary, and statistical evidence they have
strated the disparate impact that women suf
terms of promotions, earnings, layoffs and rec
layoffs resulting from application of the sex-se
seniority system.

A. *The business necessity doctrine*

There is a defense, of course, to a prima faci
employment discrimination. It is what is know
"business necessity doctrine."It holds that "(T)
tended discriminatory impact of an employme
may be justified. . . . if that policy is necessar
safe and efficient operation of the enterprise."
Electric Corp. vs. PHRC, 365 A.2d 649, 655 (
1976). Thus, once a complaintant establishes
facie case of employment discrimination, "(T)h
then shifts to the employer to justify his emp
lections on the basis of job-related criteria which
essary for the safety and efficiency of the enter
tation omitted)". *General Electric*, 365 A.2d at
spondents have failed to do that in these cases

In defense to the charges the respondе
raised several interrelated contentions. They a
when changes in the law began to prohibit sex
ination they undertook efforts to remove any v
such discrimination from their employment

but at the same time wished to preserve the option of "loyal" female employes to remain in female jobs if they so chose. This was accomplished, according to respondents, primarily through the tendering of certain documents to female employes during the early 1970s which ostensibly facilitated their choosing male jobs in accordance with their seniority if they wished or waiving their rights to these jobs if they preferred.

As a result of this process respondents argue that the previously sex-segregated seniority lists evolved into a female last for those incumbent women who only wished to be considered for female jobs and an integrated list for all other employes.

In light of the obvious simplicity of using integrated plant seniority for all purposes and permitting women to opt out of promotions to men's jobs if they wished (thus protecting the desires of the "loyal" employes) we are hard pressed to accept any assertion that the employment practices here in question are justified by business necessity.

B. *Ostensible employe desires*

We reject based upon the evidence and common sense the respondents' position that female employes generally did not wish to be promoted to male jobs. Such a view was characterized in *General Electric*, 365 A.2d at 661, as "an assumption based upon an undifferentiated stereotypic appraisal of the women as a class; as such it was plainly discriminatory." Similarly in *Ostapowicz vs. Johnson Bronze Co.*, 369 F. Supp. (W.D. Pa. 1973) the court observed at 537 that:

> It is true that certain females testified they did not want the responsibility which went with the job of machine operator first class even though this meant more money, and the same, of course, might be true of many men. In the view of the court, however, this appears to be a type of warrantless assumption based

on generalizations or stereotyped charact
of the sexes. It is the opinion of the cou
justify failure to advance women because
not want to be advanced is a type of stereoty
acterization which will not stand.

Respondents' view that most female empl
not interested in promotion to male jobs was or
sexist stereotypes that seems to have guide
ment practices at Crown. It is also noteworthy,
to the extent that these ostensible desires
employes were accurately perceived by re
those desires must be attributed in part to psy
conditioning by virtue of the historic imposit
segregated job classification at Crown.

C. *The Waivers*

From approximately 1970 to 1974,
through a series of meetings and by use of an a
of documents (hereinafter referred to as '
Crown and Local 266 purported to be making
offers of non-discriminatory job placement
while actually seeking to build a "paper reco
they believed would exculpate them from a
charge of sex discrimination. We view these
unlawful per se, unlawful as used, and void as
rights to equal employment opportunity.

Nothing about the waivers suggest that
truly intended as good faith job offers. The
women to state affirmatively, in advance,
wished to exercise their seniority to secure r
anteed by equal employment opportunity law
the PHRA. But, of course, these rights being
by statute, should not require any affirmativ
More significantly, no male was ever shown,
asked to sign one of these forms. Males' seni
were exercised automatically not as an optio
only upon an affirmative effort.

Although there was some variance in the different waiver forms utilized over the years and although the scenarious in which respondents sought the waivers similarly varied, basically what most often occurred was that women were offered forms and were told to list or check off those males jobs on the forms for which they wished to be considered. The forms generally stated a waiver of rights to jobs not affirmatively indicated. Such a practice appears to be illegal per se because of the view in the courts that prospective waivers of equal employment opportunity rights are prohibited. *Alexander vs. Gardner-Denver Co.*, 415 U.S. 36, 51 (1974).

Furthermore, Waivers of statutory rights, such as those guaranteed by the PHRA, are frowned upon generally by the law and will be looked at with askance. Particularly, before giving credit to a waiver of this character, a court would have to be well-satisfied that it was a knowing and voluntary waiver. That cannot be said in this case.

The attached Findings of Fact detail the problems surrounding execution of the forms and the defects in the forms themselves. All of these attendant circumstances, reviewed in light of a strong public policy against giving credit to waivers such as these, compel our finding that female employes at Crown, when signing these waivers, did not intend to waive their rights to equal job opportunities.

Finally, the use to which respondents put the forms belies any assertion that the forms had anything whatsoever to do with implementation of equal employment opportunity rights. Crown never demonstrated any significant business use of the forms. There appears to be little if any connection between what a female employe might have placed on the forms and her actual movement to a male job.

The forms obviously had only the most limited affect in dismantling the sex-segregated seniority system as, in all, only 18 females appeared on the integrated seniority

list over the years 1971-1975, and no more tha
appeared on that list in a given year.

The general rule against prospective w
equal employment rights, the public policy disc
waivers of statutory rights, the discriminatory,
circumstances surrounding execution of the fo
the lack of any meaningful business use of the
operate to require rejection of respondents'
based upon the waivers.

D. *Challenges to statistical evidence*

Crown offered a rather obtuse challenge t
tistical case presented by complainants.
Crown's evidence appeared to acknowledge the
of most of complainants' statistical presenta
Crown concluded that any disparate impact su
any identifiable group was due, not to sex, but t
the group was on the female or the integrated
list.

This may well be a nice and technically c
tistical distinction. However, for purposes of
an anti-discrimination law such as the PHRA,
contrary to the suggestion implicit in Crown's
to ignore the basic facts that the integrated se
was virtually all male and that with some limi
tions the seniority systems at Crown remai
tively segregated at all times material to this
Furthermore, segregation of the seniority sy
attributable totally to the respondents, n
discriminatees, and was patently illegal. (
Crown's expert admitted that in 2 of the 4 anal
even women on the integrated list had ear
were less, by statistically significant amounts,
ilarly situated men.)

VI. Remedy

The remedical authority of the Commission is set forth as part of §9 of the PHRA, 43 P.S. §959:

> If, upon all the evidence at the hearing, the Commission shall find that a respondent has engaged in or is engaging in any lawful discriminatory practice as defined in this act, the Commission shall state its findings of fact, and shall issue and cause to be served on such respondent an order such respondent to cease and desist from such unlawful discriminatory practice and to take such affirmative action including but not limited to hiring, reinstatement or upgrading of employes, with or without back pay, admission or restoration to membership in any respondent labor organization. . . . . as, in the judgement of the Commission, will effectuate the purposes of this act, and including a requirement for report of the manner of compliance.

Reviewing this medical authority in *PHRC vs. Alto-Reste Park Cemetary Association*, 306 A. 2d 881 (1973), the Pennsylvania Supreme Court observed that "the Legislature vested in the Commission, quite properly, maximum flexibility to remedy and hopefully eradicate the 'evils' of discrimination." 306 A. 2d at 887. We believe that the attached Final Order, read in light of our Findings of Fact and Conclusions of Law, is a responsible exercise of that judicially sanctioned flexibility.

Our primary concern in formulating a remedy is manifest in the injunctive type relief we have ordered. This is intended to dismantle and root out as expeditiously as possible the sex-segregated senority system which has continuously disadvantaged female workers. (Although most of the evidence in this case concerned the period from July 9, 1969 to December 31, 1975, discriminatory practices having been clearly demonstrated for that period and there being no evidence suggesting

their cessation, we may and do reasonabl
the practices remain prevalent, *PHRC v*
erals Corp., 382 A 2d 731, 735 (Pa. Sup.
issue a remedy accordingly.)

An additional purpose in the exercise
authority is, of course, to restore discrim
"rightful place," i.e. to vitiate the effects
ination they have endured over time. *Al*
Co. vs. Moody, 422 U.S. 405 (1975). Unf
ute of limitations problems have restric
discriminatees to whom a remedy can b
the absence of sufficient evidence relati
following December 31, 1975, the burde
of which belonged to complainants, prec
etary relief for the period after the date.

In calculating monetary relief for the
discriminatees we have been guided by t
flexibility enunciated in *English vs. Sea*
R.R. Co., 12 EPD Para. 11,237 (S.D. Ga

> (i) Difficulty of ascertainment of a
> not be confused with right of recov
>
> (ii) Unreasonable exactitude, in ligh
> formation, will not be required.
>
> (iii) Uncertainties will be resolved in
> tims of unlawful discrimination a
> wrongdoers.

We have also considered in calcuati
lief the court's declaration *United St*
States Steel Corp., 520 F. 2d 1043, (5th
denied, 429 U.S. 817, (1976) at 1050:

> Once a court has determined that a
> duct caused some damages to the c
> resentative sample of its members,

falls upon the wrongdoers to explain away or dis
prove the damages which each claimant's evidenc
arguably supports.

With respect to those females who had employmen
rights with Crown between July 30 and December 31
1975, no evidentiary showing was made which woul
disqualify any of them.

The specific amounts awarded to eligibl
discriminatees were arrived at by considerin
Complainant's Exhibit 46 introduced at the hearing. Th
exhibit represents a statistical study by complainant
expert purporting to demonstrate how much additiona
earnings each female would have enjoyed during 197
in the absence of discrimination. Respondent's expe
had no signficant dispute with the figures on the exhibi
We then awarded to each discriminatee 42% of th
amount on the exhibit representing a pro-rata share
the amount covering the period July 30 to December 3
1975.

We awarded Elizabeth McNasby a pro-rata portio
of the amount on Exhibit C-43 for 1971 from the date
her complaint. She was awarded the amounts reflecte
on C-44 for 1972, C-45 for 1973, and C-46 for 1975. B
cause there was no data available from respondents f
1974 we awarded McNasby an amount for that year re
resenting her average amount for the other years.

Finally, because we regard Crown principally r
sponsible for the diminished earnings of t
discriminatees we have not made Local 266 jointly liab
for back pay.

FINAL ORDER

AND NOW, this 29th day of September, 1981, t
Pennsylvania Human Relations Commission (herein
ter "PHRC" or "Commission") orders:

1. That Respondent Crown, Cork and Seal (here
after "Crown") shall conduct all of its hiring and e

ployment practices in a non-discriminatory manner and in accordance with the Pennsylvania Human Relations Act (hereinafter "PHRA"), Act of October 27, 1955, P.L. 744, as amended, 43 P.S. Section 951, *et seq.*

2. That Respondent Sheet Metal Workers Union, Local No. 266 (hereinafter "Local 266") shall conduct all of its activities, including but not limited to, initiation and reinstatement of members, setting and collection of dues and fees, processing of grievances filed by employes, representation of employes, and advocacy of the interests of employes in a non-discriminatory manner and in accordance with the PHRA.

3. That Respondent Crown shall:

(a) recruit female employes on the same basis as male employes;

(b) hire female employes on the same basis as male employees;

(c) make initial assignments to shift, department, and/or job regardless of the sex of the employe;

(d) promote and transfer employes to any department and/or job regardless of sex;

(e) assign overtime work to employes regardless of their sex;

(f) layoff employes without regard to sex and based solely upon plant seniority, in the absence of a bona fide, necessitous business reason for using a measure or consideration other than plant seniority; and

(g) recall employe from layoff without regard to sex and based solely upon their seniority in the absence of a bona fide, necessitous business reason for using a measure or consideration other than plant seniority.

4. That Respondent Crown shall pay back wages to members of the class of females who were employed or who possessed employment rights at Crown's Plant No. 1, production and maintenance unit, during the period July 30, 1975 to December 31, 1975. The amount of back pay shall be equal to 42% of the amount listed by the name of each female on the document introduced in evidence at the hearing as Complainant's Exhibit 46. Added to this total shall be 6% interest, compounded on a quarterly basis from the end of calendar year 1975. The total may be reduced by such appropriate deductions as are allowable under federal, state, and local income tax laws or any other appropriate and normal deductions provided that Crown shall file within 60 days after the effective date of this Order an appropriate affidavit itemizing any such tax or other deductions and indicating, with respect to each, the precise reason therefore (e.g. federal income tax, state income tax, local wage tax, social security and/or any period of unavailability for employment). Such filing (and all filings and reports required pursuant to this Order) shall be directed to the Director, Systemic Enforcement Division (hereinafter "SED") at the PHRC's Headquarters office. Commission staff shall have 30 days to object to any of the proposed deductions. In the event of any objections by Commission staff, the net amount minus deductions proposed by Crown shall immediately be paid and Crown shall have an opportunity to demonstrate by clear and convincing evidence presented to the Hearing Panel that each of the contested deductions is proper. The Hearing Panel's recommendations upon the objections shall be ruled upon by the Commission. Post-judgment interest shall be payable at the rate of 6% per annum compounded quarterly.

5. That the preceding paragraph of this Order shall apply in full to the back wage award of Elizabeth McNasby except that in lieu of 42% of the amount listed by her name on Complainant's Exhibit 46, her award shall be based upon the following yearly amounts plus

6% interest compounded on a quarterly basis from t
end of calendar year 1971:

1971 - $2499.28
1972 - $6510.80
1973 - $6977.59
1974 - $6306.62
1975 - $7887.78

6. That to the extent that openings are or subs
quently become available. Crown shall make good fa
offers of reinstatement to each female employe who
presently laid off if she was laid off while a less pl
senior male continued to be employed. Such offers sh
be made based upon employment availability and re
tive plant seniority within the production and main
nance unit.

7. That within 180 days after the effective date
this Order, Crown shall integrate its shift, departme
and plant seniority systems in the following manner:

a) All employes, regardless of sex, shall be given
opportunity to bid on the shift of their choice, bas
solely upon their plant seniority. Such bids shall
honored by management strictly on the basis of pl
seniority.

b) All employes shall be informed of the results
the shift bidding and, thereafter, each fem
employe shall have the opportunity to bid on the
partment of her choice. The bid shall be honored
management strictly on the basis of plant senior
and if upon that basis any female's bid cannot
accommodated she shall be given successive opp
tunities to bid into the department of her choice u
such time as her plant seniority results in her
being honored.

c) Within any department to which she is assign
regardless of whether by bidding or otherwise, e
female shall be allowed to bid on the particular jo

her choice, provided that she has greater plant seniority than the existing incumbent thereof at the time of the bid.

d) In each case where a female employe takes advantage of these bidding opportunities, she shall be granted not less than 30 days of bona fide, good faith training on the selected job, in recognition of the cumulative effect of historical denial of equal employment opportunities at Crown.

e) In the event that any voluntary or involuntary transfer directly or indirectly resulting from the bidding procedures set forth in this paragraph causes reassignment of any employe to a lower-paying position than that which s/he regularly holds, his/her wages shall be "red-circled" and maintained for the duration of employment with Crown at not less than the "red-circled" amount, plus any raises generally granted to other employes of the same job class.

f) Variances from the requirements of this paragraph shall be available to accommodate individual employe hardships or for other good cause shown with the consent of the SED Director.

8. That in order to facilitate the intelligent exercise of bidding rights set forth in subparagraphs 6(a) - 6(c) of this Order, Crown and Local 266 shall take all necessary steps to advise and inform female employes as to the nature and duties of all production and maintenance jobs within Plant No. 1.

9. That within 30 days of the effective date of this Order, all management and supervisory personnel within Plant No. 1, and all officials and shopstewards of Local 266 shall be provided by Crown and Local 266 with complete copies of the Order, and the Findings of Fact, Conclusions of Law, and Opinion upon which it is based.

Copies shall also be posted on all bulletin boar
throughout Plant No. 1 and shall remain clearly a
prominently displayed for a period of 3 years.

10. That Crown shall institute a bona fide affirm
tive action program directed towards recruiting, hirin
promoting, transferring, and recalling females and
ward remedying the continuing effects of its past d
criminatory practices. The affirmative action progra
shall include an appropriate training program for
males and an educational program to acquaint all sup
visory and non-supervisory employes at Plant No. 1 w
the requirements of the PHRA and the particular re
edies being ordered in these cases. The affirmative
tion program shall be in writing and a copy shall be s
to the SED Director within 180 days of the effective d
of this Order.

11. That Respondent Crown and Respondent Lo
266 shall take all reasonable steps necessary to ins
that none of the named complainants, females who t
tified at the hearing of this matter, or other female
male employes of Crown or members of Local 266 w
assisted with the investigation of this case or, who at
time prior or subsequent to the effective date of this
der, advocated the rights of the female employes wit
Plant No. 1 under the Pennsylvania Human Relati
Act, or who opposed unlawful employment practices
subjected to any harassment or discrimination.

12. That a copy of this adjudication shall be
warded to the Pennsylvania Labor Relations Board,
National Labor Relations Board, Pennsylvania Dep
ment of Labor, Federal Department of Labor and Lo
266's parent International Union, recommending t
appropriate action be taken with respect to Local 266
officials and agents.

13. That Local 266 shall cease requiring the p
ment of dues while an employe is on layoff status.

14. That Local 266 shall cease requiring the p
ment of any reinstatement fees associated, or in any

connected with any employe's return from an involuntary layoff.

15. That within 60 days of the effective date of this Order, Local 266 shall reimburse all females for any dues paid while on layoff and for any fees paid upon reinstatement from layoff between July 30, 1975 and the effective date of this Order. Local 266 shall submit a complete report to the SED Director indicating with respect to each female who receives a reimbursement pursuant to this paragraph the name of the female and the amount reimbursed. With respect to any female who does not receive a full reimbursement pursuant to this paragraph, Local 266 shall report to the SED Director the name of the female and why she received less than full reimbursement.

16. That for 3 years from the effective date of this Order, the Commission expressly retains jurisdiction over this matter to insure implementation of the provisions of this Order, or to modify or amend the Order to effectuate the purposes of the PHRA.

17. That the SED Director shall oversee the implementation of the provisions of this Order for a period of 3 years after its effective date and upon notice, shall have access to the confidential personnel records of Crown employes and to other records of Crown and Local 266 to the extent necessary to fulfill PHRC duties under the Order, provided that appropriate confidentiality shall be maintained for such records.

18. That for 3 years from the effective date of this Order, any party may petition the Chairperson of the Commission to reopen the record for or in connection with implementation, modification, or amendment of the Order.

19. That for 3 years from the effective date of this Order where Commission staff believes that any of Crown or Local 266's actions reflect a continuation of the practices found unlawful by the PHRC, or constitute an effort to avoid the effect of this adjudication, Commission

staff may either petition to reopen this record for the
pose of adducing evidence and proposing an approp
course of action or may recommend that an approp
Commission charge be filed.

20. That for 3 years from the effective date o
Order, Respondent Crown shall, on a quarterly basi
port to the SED Director:

a) all hiring within the production and mainter
unit at Plant No. 1.

b) all reassignment, promotions transfers, la
recall from layoffs, and expiration of recall right
volving the production and maintenance u
Plant No. 1.

These reports shall indicate the name, address,
plant seniority date, initial job class and title, subse
job class and title, layoff date, job class and title occ
as of layoff date, recall job class and title, and the
tion of the layoff.

21. That for 3 years from the effective date o
Order, Respondent Crown shall promptly inform
SED Director, in writing, when any female is laid
any other employee with less plant seniority remain
ployed or if any employe with less plant seniority
called prior to a female employe with greater plan
iority. Crown shall supply the following informati
each employe involved in any such employment
(i.e., the female employee and each less senior em
working or being recalled): Name, address, plan
iority date, job class and title before and after lay
recall, and a narrative statement explaining the r
for the retention or recall of the less senior emplo

22. That for 3 years from the effecive date
Order, Crown and Local 266 shall, within 10 days
ceipt inform the SED Director, in writing, of any
ance or complaint (written or oral) involving:

(a) plant seniority
(b) layoffs
(c) recall from layoffs
(d) expiration of recall rights
(e) assignment of overtime
(f) sex discrimination
(g) job classifications
(h) promotions
(i) vesting of pension rights

at Plant No. 1, and involving the production and maintenance unit. This report shall include all relevant employment data and the position of each respondent concerning the merits of the grievance/complaint. Final disposition of the grievance/complaint shall also be promptly reported to the SED Director.

PENNSYLVANIA HUMAN
RELATIONS COMMISSION

BY: _____
JOSEPH X. YAFFE,
Chairperson

ATTEST:

_____
ELIZABETH M. SCOTT,
Secretary

RECOMMENDATION OF HEARING PA

AND NOW, this 28th day of August, 198
sideration of the entire record in this matter th
Panel hereby adopts the attached as their propo
ings of Fact, Conclusions of Law, Opinion and
der, and recommends that the same be finall
and issued by the Pennsylvania Human Relati
mission.

PENNSYLVANIA HUMAN
RELATIONS COMMISSION

BY: _____

ALVIN E. ECHOLS, JR., E
Chairperson of the Hearin

_____

DORIS M. LEADER
Hearing Commissio

_____

BENJAMIN S. LOWENSTEIN
Hearing Commissio

_____

ROBERT JOHNSON SM
Hearing Commissio

COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION

PENNSYLVANIA HUMAN RELATIONS COMMISSION, and ELEANOR E. NEYER, et al., *Complainants*	:	
v.	:	DOCKET NO. E-4027
CROWN CORK AND SEAL COMPANY, INC., PLANT NO. 1, and SHEET METAL PRODUCTION WORKERS' UNION, LOCAL 266, *Respondents*	:	
ELIZABETH McNASBY, *Complainant*	:	
v.	:	DOCKET NO. E-4249
CROWN CORK AND SEAL COMPANY, INC., and SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, AFL-CIO, CAN WORKERS' UNION, LOCAL 266 a/k/a SHEET METAL PRODUCTION WORKERS UNION, LOCAL 266, *Respondents*	:	

RECOMMENDATION OF HEARING PANEL
AND SUPPLEMENTARY OPINION AND ORDER

RECOMMENDATION OF HEARING PAN

AND NOW, this 26th day of April, 1982, the
Panel hereby adopts the attached as their propo
plementary Opinion and Order, and recomme
the same be finally adopted and issued by the
vania Human Relations Commission.

PENNSYLVANIA HUMAN
RELATIONS COMMISSION

BY: _____

ALVIN E. ECHOLS, JR., ES
Chairperson of the Hearin

_____

DORIS M. LEADER
Hearing Commission

_____

BENJAMIN S. LOWENSTEIN,
Hearing Commission

_____

ROBERT JOHNSON SM
Hearing Commission

SUPPLEMENTARY OPINION AND ORDER

Having carefully reconsidered our Findings of Fact, Conclusions of Law, Opinion, and Final Order in these cases in light of the Request for Reconsideration filed by Complainants, we have determined that all supplementary relief sought by Complainants must be denied.

Our Final Order was entered on September 29, 1981. Subsequently, on October 9, 1981, a Request for Reconsideration was filed on behalf of the Complainants. Certain collateral proceedings were thereafter initiated before the Commonwealth Court, but none of them are now pending.

We view the Request for Reconsideration as being divisible into five issues, the first three inter-related and the last two clearly distinct. They are:

1) Was the PHRC initiated complaint, filed December 22, 1970, sufficient to serve as a viable complaint under the standards set forth by the Pennsylvania Supreme Court in the case of *PHRC v. U.S. Steel*, 325 A.2d 910 (1974)?

2) Regardless of the sufficiency of the December 22, 1970 PHRC initiated complaint, as judged by *U.S. Steel* standards, is there any other basis for allowing the complaint to toll the running of the statute of limitations?

3) Was the complaint filed by Elizabeth McNasby, at E-4247, sufficient to state a class action allegation?

4) In light of the fact that our Final Order awarded back pay to only those women who had an employment relationship with Respondent, Crown Cork and Seal on or after July 30, 1975, should the amount of back pay have been calculated from a date preceding July 30, 1975?

5) Should Respondent, Local 266, h
jointly liable with Crown for the back

We have answered each of these questi
ative and will explain our answers seque

I. SUFFICIENCY OF THE ORIGINAL C

In our original ruling we held that t
ated complaint, filed December 22, 1970,
ficient because it did not set forth with pa
violations of the Pennsylvania Human Re
which Respondents were charged. The
particularity is compelled by §9 of the
state Supreme Court's decision in the *U*

Of course, *U.S. Steel* was decided n
years after filing of the December 22, 19
ated complaint. And PHRC staff, w
drafted the complaint, had no way of a
U.S. Steel decision. Nonetheless, when t
resort in this Commonwealth issues an i
the Human Relations Act, we are bound.
ing concluded that complaints must be pa
allegations and that lacking such partic
plaint will be dismissed, we have no cho
that ruling.

The result in this case, requiring dis
cember 22, 1970 PHRC initiated compla
be disappointing and may even seem u
otherwise we would necessarily have t
nore the Pennsylvania Supreme Court.
competent nor willing to do either of th

The Request for Reconsideration s
Steel can be distinguished and that th
1970 PHRC initiated complaint is not s
ticularity as the complaint in *U.S. Steel.*
reject this suggestion.

The two complaints suffer from i
Both catalogue virtually all the practices

Respondents as to which a violation of the Act might e
ist and they then assert that such violations do in fa
exist. Thus, they accomplish little beyond advising t
respective Respondents that an unlawfully discrimin
tory employment practice is charged. The origin
Crown complaint, like that in *U.S. Steel*, fails in a
meaningful way to set forth required particulars and t
Request for Reconsideration has done nothing to co
vince us otherwise.

The Request also attempts to distinguish this ca
from *U.S. Steel* in light of the respective procedural p
tures of the cases. It asserts that the Court in *U.S. St*
only found the unduly generalized complaint to be
sufficiently particular to support the enforcement o
subpoena and since the *Crown* case proceeded well
yond the discovery stage the particularity requireme
should not be imposed.

We find nothing in *U.S. Steel* to support this disti
tion. We need not be apologetic in reiterating that i
plainly within the authority of our Supreme Court to c
strue the Human Relations Act and to determine pro
dural matters such as the requirements for a viable co
plaint. And we are, of course, constrained by such
terminations. The *U.S. Steel* mandate of particularity
complaints purports to apply generally without regar
the procedural posture of the case. We must enforce t
mandate in the matter before us.

The Request for Reconsideration also argues t
protests relating to sufficiency of the complaint had b
previously rejected by both the hearing panel and
courts. This is not quite correct, however. In fact, on
several occasions when Respondents raised the insu
ciency of the complaint in advance of or during the h
ing, the panel repeatedly deferred consideration of
issue without making a final ruling. With the luxur
hindsight available this might not have been the

course. Nevertheless, there is no place in the record where the panel expressly ruled that the original complaint was adequate.

Similarly, in all the collateral litigation that occurred in the courts, most relating to discovery issues, Respondents frequently raised the defense of insufficiency of the original complaint. The Request for Reconsideration is incorrect, however, in asserting that any court ever adjudicated this question. Rather, the rulings generally treated Respondents' appeals as impermissibly interlocutory and thus the question was never addressed.

II. TOLLING THE STATUTE OF LIMITATIONS

In our Final Order, we held that because of its failure to satisfy the particularity standards of *U.S. Steel*, the original complaint was null and void and thus could not toll the running of the statute of limitations. The most significant consequence of this was to prohibit any remedy for any women who did not have an employment relationship with Crown on or after July 30, 1975 (90 days prior to the filing of the October 27, 1975 amended complaint which we expressly held to be viable).

The Request for Reconsideration urges that even if the original complaint was defective under *U.S. Steel* standards, still the statute of limitations should be tolled for a variety of reasons and the class of women with redressable grievances should not be restricted as in our Final Order. The Request asserts that, notwithstanding the lack of particularity in the original complaint, Respondents had actual notice as to the allegations charged and did not rely upon the deficient pleadings.

The factual premises underlying the argument are correct. It is clear that events made Crown and Local 266 aware of the scope of the charges against them before they raised the issue of deficiencies in the complaint. Nonetheless, as set forth in the preceding section, we do not understand the rule in *U.S. Steel* to be situationally

relevant. The Court appears in that case to have fixed a firm standard that is consistent with well-established Pennsylvania law; *i.e.*, that the initial pleading, the complaint, must give adequate notice to the defending party as to the charges against it. The fact that subsequent events may have informally provided Respondents with notice of the charges and the fact that Respondents apparently did not rely to their detriment upon the ambiguities of the broad, general December 22, 1970 PHRC initiated complaint, do not permit us to treat the *U.S. Steel* rule as eroded or inapplicable.

The Request for Reconsideration also argues that Crown and Local 266 participated in this case for years before raising the defense of the complaint's lack of particularity and that accordingly the defense is waived for not being timely. Several cases are cited in support of this position and without reviewing them individually in this opinion, we find each of them readily distinguishable as involving objections which were not raised until after trial began or which were not raised in accordance with a specifically governing procedural rule.

In this case, Respondents' objection is in no sense untimely. It was raised approximately two years before the public hearing and was not outside any controlling rule of PHRC or general administrative procedure. The delay in raising the objection, in fact, should be viewed as attributable, in part, to the essential differences between administrative and judicial processes. Unlike court proceedings, when one is before an administrative agency like the PHRC, with a mixed investigative, prosecutorial, and adjudicative function, there is no reason, no incentive compelling the raising of procedural objections before litigation is threatened. Indeed, contrary to the rules governing proceedings in court, §9 of the Human Relations Act makes clear that an answer to the complaint is not even required of a Respondent. There was thus, no reason for Respondents in this matter to raise their objections before they did.

Furthermore, the lengthy delay in processing thi matter, at least up to the October 27, 1975 filing of th amended complaint appears primarily attributable t PHRC staff. The *U.S. Steel* case was decided in late 197 and for approximately a year before and a year afte PHRC staff had almost no contact with Respondents Several months after the amended complaint was filed the particularity defense was raised. The defense there fore does not appear to be untimely or waived.

III. CLASS ACTION STATUS OF THE McNASBY COM PLAINT

The amended PHRC initiated complaint, at Docke Number E-4027, filed October 27, 1975 is and wa treated in our Final Order as a class action. In the Re quest for Reconsideration, however, it is urged that th complaint filed by Elizabeth McNasby at E-4249 in Ma 1971, is also a proper class action.

McNasby's complaint alleged that "(T)he respon ents consorted in the layoff of the complainant becaus of her sex, female, and have prevented her, as well a other females, from enjoying equal job opportunities Crown, Cork and Seal Company."

Subject to close analysis, the complaint neatly d vides into two specific allegations. The first concern only McNasby's layoff. The second is about preventin "females from enjoying equal job opportunities." Ho such prevention orrurs, and more importantly, what jo opportunities are involved, is nowhere disclosed.

In our Final Order we upheld the sufficiency McNasby's individual claim and unlike all the other f males at Crown, whose only protection came under th umbrella of E-4027, McNasby was awarded back wag going back to the 1971 filing of her ccomplaint. Ho ever, we also held that the second part of McNasby complaint, the class action allegation, was insufficien particular and must fall.

Class actions under the PHRC have been expressly made the subject of liberal rules by our state Supreme Court in *PHRC v. Freeport Area School District*, 359 A.2d 724 (1976).

It appears that the *McNasby* complaint satisfies the *Feeeport* test for class actions and to the extent that anything on page 42 of our original opinion suggests the contrary we stand corrected and modify our opinion accordingly. But nothing in *Freeport* dispenses with the complaint — particularity rule of *U. S. Steel.* The rule was not addressed in *Freeport* because the complaint in that case clearly satisfied the standard by adequately describing the discriminatory act to which Complainants were allegedly being subjected. This is unlike the *McNasby* complaint which, with respect to the class, merely says that females are prevented "from enjoying equal job opportunities." Failing to satisfy the adequacy of complaint requirement, we never reach the point in *McNasby* of addressing the question whether it satisfies the *Freeport* requirements for class actions.

IV. PERIOD DURING WHICH BACK PAY ACCRUES

Having determined that complaint and statute of limitations problems restrict the class of women with redressable grievances to those who had an employment relationship with Crown on or after July 30, 1975, our Final Order included an award of back pay for the period July 30 to December 31, 1975.

The Request for Reconsideration raises a very serious challenge to our disallowance of back wages for any time predating July 30, 1975.

We adhere to the view manifest in our prior cases that where a complaint is timely filed, we have authority to award back pay for a period pre-dating the filing of the complaint by more than 90 days. We have purposefully chosen in this case, however, to exercise our discretion, and circumscribe our award of back pay within the same

time frame as governed our statute of limitations
sion.

As we stated at page 55 of our original opinion in
matter, "Our primary concern in formulating a rer
(has been) . . . to dismantle and root out as expediti
as possible the sex-segregated seniority system w
has continuously disadvantaged female workers."

In this regard it should be recalled that this is
always has been a PHRC initiated action. The Dece
22, 1970 filing named only the PHRC as a Complai
Subsequently, when the amended complaint of Oc
27, 1975 was filed, the affidavits of thirteen indiv
women were attached. Until that time no indivi
other than Elizabeth McNasby in her separate
plaint, had come forward as a Complainant.

The interests of the PHRC in litigating discri
tion claims are frequently identical to the interests
dividual discriminatees. But the primary goal o
agency must be to vindicate the public interest. T
especially so in PHRC initiated complaints. We fe
Final Order in this case, with its forceful injunctive
relief, accomplishes the vindication of the public in
while fairly balancing the relevant private interest

Elizabeth McNasby, who filed her individual
plaint in 1971 and who has been totally faultless
respect to subsequent delays in this matter has
granted relief going back to the date of her
Theresa Reed, who did not become a party to this
tion until solicited by PHRC staff to excute an affid
1975, and all other class members who are protect
the 1975 amended complaint, received some bac
Respondents Crown and Local 266 are ordered to
radically their existing practices and to pay some
pensation for past wrongs. However, they are no
financially accountable for the several years pre-
the amended complaint when delays in processin
matter were attributable primarily to PHRC staff.

Unfortunately, we can award nothing to the twelve affiants (other than Theresa Reed) who ceased employment with Crown at various times between 1966 and 1974 and who annexed their affidavits to the 1975 amended complaint. We have no doubt that these twelve were victimized by the pattern of unlawful sex discrimination that we have found to have been practiced by Respondents throughout all periods relevant to this litigation. Nonetheless, for reasons set forth in our original opinion and earlier in this supplementary opinion, the failure of the original December 22, 1970 PHRC initiated complaint coupled with the 90 day statute of limitations compels us to dismiss their grievances.

V. JOINT LIABILITY OF LOCAL 266

At page 57 of our original opinion, it says: "Finally, because we regard Crown principally responsible for the diminished earnings of the discriminatees, we have not made Local 266 jointly liable for back pay." The Request for Reconsideration, argues that the union can and should be made jointly and severally liable or, at least, that the liability should be apportioned.

The Request is no doubt correct that this can be done. The case of *PHRC v. Transit Casualty*, 387 A.2d 58 (1978), clearly allows back pay orders against Respondents other than employers and numerous Title VII cases, where discrimination has occurred pursuant to collective bargaining, have made unions jointly and severally liable with employers.

Nonetheless, in this case we feel that we have fairly distributed the financial burdens of our order commensurate with the nature of the wrongs done. Respondent Crown was both the principal beneficiary and the principal perpetrator of the misdeeds. Furthermore, Respondent, Local 266, has not escaped monetary consequences for its discriminatory behavior. Paragraphs 13-15 of our Final Order, page 65, restricts monies to be

collected by the union in the future and requi
bursements to "all females for any dues paid v
layoff and for any fees paid upon reinstatement f
off between July 30, 1975 and the effective dat
Order."

VI. CHANGES IN THE FINAL ORDER

We take this opportunity to correct two sig
typographical errors in our original Final Order

(1) the word "plant should be added to page
agraph 3(g) so that it reads — "recall emplo
layoff without regard to sex and based sole
their *plant* seniority;"

(2) the reference at page 63, paragrap
"Subparagraphs 6(a)-6(c)" should be cha
"subparagraphs 7(a)-7(c)".

AND NOW, this 10th day of May, 1982, in
eration of the record in this matter, our Findings
Conclusions of Law, Opinion, and Final Order
September 29, 1981, and the Request for Reco
tion filed by Complainants on October 9, 1981,
this Supplementary Opinion and Order and de
lief sought in the Request for Reconsideration.

PENNSYLVANIA HUMAN
RELATIONS COMMISSI

BY: _____
DORIS M. LEAD
Vice-Chairpers

ATTEST:

_____
ELIZABETH M. SCOTT,
Secretary

JOAN L. MURPHY et al., *Petitioners*	:	In the Commonwealth Court of Pennsylvania
v.	:	
COMMONWEALTH OF PENNSYLVANIA, PENNSYLVANIA HUMAN RELATIONS COMMISSION, *Respondent*	:	No. 1348 C.D. 1982

BEFORE:
HONORABLE ROBERT W. WILLIAMS, JR., Judge
HONORABLE JOSEPH T. DOYLE, Judge
HONORABLE ALEXANDER F. BARBIERI, Judge

ARGUED: April 6, 1983

OPINION BY
JUDGE BARBIERI FILED: September 28, 1983

Fourteen former and current employees (Petitioners) of Crown Cork and Seal Company (Crown) appeal here from an order of the Pennsylvania Human Relations Commission (Commission) disposing of two complaints filed against Crown and Local 266, Sheet Metal Workers' International Association, AFL-CIO (Union). We affirm.

On December 22, 1970, the Commission instituted a complaint, on its own motion, against Crown and the Union making the following allegation of improper conduct:

> 3. On or about to wit, December 22, 1970 the complainant alleges that the respondent Company engages in unlawful employment practices which are discriminatory with respect to female employes, because of their sex, in hiring, assignment, seniority, transfer, salary, overtime, promotion, denial of train-

ing, and layoff. It is further alleged that the resp
ent Union concurs in and aids and abets the disc
inatory practices of the respondent company.

On June 11, 1971, a former employee of Cr
Elizabeth C. McNasby, also filed a complaint with
Commission in which she alleged that Crown and
Union "consorted in the lay-off of the complainan
cause of her sex, FEMALE, and have prevented he
well as other females, from enjoying equal job opp
nities at Crown Cork and Seal Company." Followin
procedures specified in Section 8 of the Pennsyl
Human Relations Act (Act), Act of October 27,
P.L. 744, *as amended*, 43 P.S. §959, the Commissio
stituted investigations into each of these complaints
found probable cause to credit the allegations of its
plaint and the McNasby complaint on April 6, 197
June 20, 1972, respectively. The Commission then
menced conciliation efforts, and on October 26, 19
sued Investigative Findings detailing the evidence
compiled of the alleged discriminatory condu
Crown. This evidence tended to show that Crow
criminated against women with respect to hiring,
ing, job assignments, layoffs, transfers, promotions
ary levels, and the availability of overtime. The U
then filed a written response to the Investigative
ings alleging, *inter alia*, that it had no control ov
policies of Crown.

Although the Commission's conciliation efforts
sequently proved unsuccessful, the Commission to
further action on either the McNasby or its own
plaint until the Pennsylvania Supreme Court issu
decision in *Pennsylvania Human Relations Comm*
v. United States Steel Corp., 458 Pa. 559, 325 A.2
(1974). In *United States Steel*, the Commission ha
a complaint against the United States Steel Corpo
(U.S. Steel) which contained an allegation of dis
natory conduct nearly identical to that found i

Commission's December 22, 1970 complaint against Crown and the Union. Interrogatories were then sent to U.S. Steel, U.S. Steel refused to answer them, and the Commission responded by filing an equity action addressed to this Court's original jurisdiction seeking an order directing U.S. Steel to respond. Preliminary objections were filed, and in *Pennsylvania Human Relations Commission v. United States Steel Corporation*, 10 Pa. Commonwealth Ct. 408, 311 A.2d 170 (1973), we dismissed the Commission's action because (1) we lacked equity jurisdiction over the matter and (2) the Commission's complaint failed to meet the particularity requirement of Section 9 of the Act, the relevant portion of which reads as follows:

> Any individual claiming to be aggrieved by an alleged unlawful discriminatory practice may make, sign and file with the Commission a verified complaint, in writing, which shall state the name and address of the . . . employer . . . alleged to have committed the unlawful discriminatory practice complained of, *and which shall set forth the particulars thereof* . . . . The Commission upon its own initiative . . . may, in like manner, make, sign and file such complaint. . . . (Emphasis added.)

On appeal, our Supreme Court affirmed solely on the basis that the Commission's complaint failed to meet the particularity requirements of Section 9. In response to this decision, the Commission filed an Amended Complaint against Crown and the Union on October 27, 1975, naming itself and thirteen former and current employees of Crown as the complainants, in which it described in great detail the alleged discriminatory conduct of Crown and the Union. This complaint, in addition to seeking specific forms of relief for each of the individually named complainants, also sought relief "in the form of status adjustments, back wages and/or restoration of lost benefits" for the following classes of individuals:

(a) All female employees placed on layoff since July 9, 1969 for any period o whether or not they were ever recall whether or not their recall rights have s pired;

(b) All female employees who were on lay tus, on July 9, 1969 who were not rec did not accept recall subsequent to July whether or not their recall rights have s pired;

(c) All female employees who since July have for any period of time been emp jobs classified at Code 19 or below;

(d) All females who since July 9, 1969 ha rejected for employment by the Res Company.

Crown subsequently filed an answer to this a complaint denying each of the allegations of dis tory conduct, and in "New Matter" asserted, *in* (1) that the Commission's amended compla barred by the doctrine of laches; (2) that the Com was not authorized to seek class-wide relief, and certain of the individually named complainant standing to file a complaint since they were n employed by Crown. The Union, for its part, sim mitted a letter informing the Commission that not file an answer. The Commission subsequen ducted a new investigation, made a new probab determination, reinstituted conciliation efforts, sued amended findings summarizing the resu investigation, even though the Commission's A Complaint, by its very terms, purported to amended version of the Commission's Decem 1970 Complaint, and not a new cause of action after, the Commission's conciliation efforts on proved to be unsuccessful, and on February 2

Crown filed a motion to dismiss alleging, *inter alia*, that the Amended Complaint had not been filed within the ninety day time period specified in Section 9 of the Act. Thirty-seven days of hearings followed between the dates of October 30, 1978, and June 17, 1980, and after evaluating, for over a year, the voluminous record created during these hearings, the Commission issued, on September 29, 1981, a sixty-eight page adjudication and order. In this adjudication the Commission found as facts, *inter alia*, (1) that Crown, with a few minor exceptions, maintained a system of sex-segregated job classifications, (2) that men were assigned to job classifications with higher ratings than those offered women employees, (3) that Crown, with the Union's acquiesence, maintained separate seniority lists for male and female job classifications, (4) that these separate seniority lists were used for the purpose of ascertaining transfer, promotion, layoff, and recall rights, (4) that in 97.7% of the cases where females had been laid off of their jobs on the basis of their position on the female seniority list, men with less seniority had been retained in male jobs, (5) that in the period between July 9, 1969, and December 31, 1975, female employees at Crown had been laid off more often and for greater lengths of time than men even though females, as a group, had more seniority than males, (6) that the average rate of pay for female employees during this period was less than that for male employees, (7) that Crown hired fifty new male employees, but no new female employees, between the dates of July 9, 1969 and December 31, 1975, (8) that male employees occasionally filled temporary vacancies in female job classifications, but that females were never asked to fill temporary vacancies in male job classifications, (9) that the Union refused to file grievances or to institute litigation on behalf of female employees even though the female employees complained to the Union about Crown's sexually discriminatory practices, and (10) that the Union, in violation of the provisions of its own con-

stitution, did not submit withdrawal car
ployees, who were frequently women, s
employees would be excused from pay
during the period of their layoffs, or rei
upon being recalled to work. The Comm
cluded, as a matter of law, *inter alia*, (1)
ber 22, 1970 complaint failed to satisfy
requirements of Section 9 of the Act, a
"defective complaint and a nullity[,]" (2)
27, 1975 complaint, although purpo
amendment of its December 22, 1970 c
fact a new cause of action, and hence
ninety day time limitation specified in S
all of the allegations of discriminatory c
by the individually named complainan
mission's October 27, 1975 complaint,
vanced by Theresa Reed, involved dis
duct occurring more than ninety days
of the Commission's Amended Compl
were time b[illegible]ed, (4) that "[d]elays in
this matter . . . albeit attributable pri
staff, do not give rise to a defense of lac
deprived Crown or Local 266 of due pro
that the Commission is authorized by
Section 9 of the Act to initiate compla
classes of aggrieved persons, (6) that C
of female employees between the date
and December 31, 1975 with respect t
signment, job transfer, compensation,
from layoff" constituted a continuing
tice of discrimination on the basis of s
the provisions of Section 5(a) of the Act
(7) that the Union violated the provi
5(c) and 5(e) of the Act, 43 P.S. §§955(
failing to process grievances filed by f
by encouraging certain female employe
of their equal employment opportunity
to seek enforcement of provisions of c

ing agreements it negotiated prohibiting discrimi
conduct, and by "requiring the payment of dues
employees were in layoff status and/or by requiri
payment of reinstatement fees as a condition of obt
reinstatement to employe status from layoff[,]" a re
ment which the Commission concluded disprop
ately affected female employees "in the cont
Crown's sex-segregated layoffs. . . ." The Comm
further concluded that the portion of Eli
McNasby's June 11, 1971 complaint pertaining
individual claim for relief satisfied the particula
quirements of Section 9 of the Act, but that he
plaint was not sufficiently specific with respect to
for similarly situated female employees, thereby r
that portion of the complaint "null and void." Fin
for the merit of McNasby's individual claim, the
mission reached the following conclusion:

> The sex-segregated job classification and
> ity systems historically employed by Crown in
> the movement of Elizabeth McNasby
> through the production and maintenance ra
> Crown as occurred with other women. This
> with artificially low department seniority in
> Thus, continued layoffs she suffered in her
> tion position were illegal consequences of a s
> system which disproportionately disadva
> women and are therefore remediable.

In a ten page order accompanying its adjudicati
Commission ordered, *inter alia*, monetary relief
Elizabeth McNasby and "the class of females wh
employed or who possessed employment rig
Crown's Plant No. 1, production and maintenan
during the period July 30, 1975 to December 31,
These amounts represented the difference betw
pay the women would have received if there
been a sex-based seniority system at Crown,
amount of pay they actually received, during the

of time the Commission awarded relief, as shown in a statistical analysis which was offered into evidence at one of the Commission hearings. In the case of Elizabeth McNasby, the Commission awarded relief from the date she filed her complaint, through December 31, 1975. The rest of the female employees, however, were only awarded relief for the five month period running from July 30, 1975, a date three months prior to the filing of the Commission's Amended Complaint, through December 31, 1975. The Commission concluded that it could not award monetary relief to female employees, other than McNasby, for periods of time prior to July 30, 1975. The Commission also concluded that "the absence of sufficient evidence relating to the period following December 31, 1975, the burden of production of which belonged to complainants, precludes any monetary relief for the period after that date." The Commission next ordered Crown to make good faith offers of reinstatement, as jobs became available, and in the relative order of plant seniority "within the production and maintenance unit[,]" to each female employee who was laid off while a male of lesser seniority was retained, and additionally issued a number of directives designed to integrate Crown's shift, department, and plant seniority systems. Crown was also directed to implement an affirmative action program, and the Union, for its part, was ordered (1) to conduct its activities, and to advocate the interests of its members, in a nondiscriminatory manner, (2) to cease the practice of either collecting union dues while its members were laid off, or requiring the payment of reinstatement fees when members returned from involuntary layoffs, and (3) to reimburse all union dues and reinstatement fees paid by female employees at Crown who were on layoff status or who were reinstated at any time between July 30, 1975 and the effective date of the Commission's order. The Commission expressly absolved the Union of any liability for the award of monetary relief that was made to the females who had suffered

diminished earnings, however, stating that it felt that Crown was primarily responsible for this diminution in earnings.

Following the issuance of this adjudication and order, a request for reconsideration was filed by the Commission's staff which the Commission granted on November 27, 1981. After the submission of further legal memoranda to a Commission hearing panel, a further supplementary opinion and order was issued, which affirmed the initial results reached in the Commission's first adjudication and order. In this supplementary opinion, the Commission noted that while it had the power to afford relief to the female employees of Crown, employed as of July 30, 1975, for periods of time prior to that date, it had elected not to do so in this case concluding that

> (t)he interests of the PHRC in litigating discrimination claims are frequently identical to the interests of individual discriminatees. But the primary goal of the agency must be to vindicate the public interest. This is especially so in PHRC initiated complaints. We feel our Final Order in this case, with its forceful injunctive-type relief, accomplishes the vindication of the public interest while fairly balancing the relevant private interests.

The Commission similarly concluded that while it could have held the Union jointly liable for all of the monetary damages awarded, it had elected not to do so. The present appeal, filed by McNasby and the thirteen individually named complainants in the Commission's Amended Complaint, followed.

Before this Court, Petitioners initially advance a number of legal theories in support of the proposition that the Commission erred as a matter of law, or abused its discretion, by not affording complete monetary relief to all female employees employed at Crown ninety days prior to the filing of the Commission's original complaint and thereafter. We shall address these issues seriatim.

Petitioners first contend, as we understand it, th the Commission's initial complaint was sufficiently sp cific, given the factual context of the present case, meet the specificity requirements of Section 9 of the A and that its technical defects, if any, were minor, a could be cured by amendment, as opposed to the filing a new cause of action. We disagree.

To support their assertion that the Commissio original complaint complied with the specificity requi ments of Section 9 of the Act, Petitioners note that employee of Crown, Mary Martin, filed a formal co plaint against Crown on April 15, 1970, and the Union April 20, 1970, in which she complained about speci discriminatory practices, and that the Commissi made, after an investigation, a probable cause deter nation on the Crown complaint prior to October 1970, when Ms. Martin withdrew the complaints. Pe tioners also make reference to a report found in t record before us, written by a Commission field rep sentative, which indicates that eleven female employe of Crown, including Ms. Martin, visited t Commission's Philadelphia office on February 27, 19 to complain about specific discriminatory practices Crown, but refused to file a formal complaint at that ti when they were informed they would have to file suc complaint under their own names. By making refere to these facts, Petitioners apparently seek to estab that Crown and the Union were engaging in discri natory practices, and that they were made aware of t fact through the investigative process initiated by Martin complaint. Petitioners then conclude that si Crown and the Union had such knowledge, the Co mission was excused from alleging the discriminat practices complained of with particularity when it fi its original complaint. Such a conclusion, howe misperceives the function of a complaint filed pursu to the procedures specified in Section 9.

In addressing the problem of discrimination, which may take myriad forms defying statutory description, the General Assembly has provided a procedure in Section 9 whereby an alleged discriminator is put on notice, through the filing of a complaint, of the specific conduct which is alleged to be discriminatory. Subsequent to the receipt of this notice, and prior to the holding of a formal hearing on the charge, the alleged discriminator is informed, following a Commission investigation, as to whether or not the Commission finds probable cause to credit the allegations of the complaint, and if such a probable cause determination is made, conciliation efforts are initiated in an attempt to resolve the matter. Only after the alleged discriminator is informed of the specific conduct complained of, has been informed that the Commission has found probable cause to credit the allegations of the complaint, and has refused, after conciliation efforts, to modify its behavior, does the matter proceed through the sometimes lengthy and expensive process of a formal hearing, a process, the resort to which, the General Assembly intended to minimize through the procedures specified in Section 9. It is clear, therefore, as our Supreme Court held in *United States Steel*, that the purpose of the filing of a complaint under the procedures specified in Section 9 is not simply to inform an alleged discriminator that it will be made the subject of an investigation, as Petitioners allege in their brief to this Court, but instead is designed to inform the alleged discriminator of the specific conduct complained of, so that it will know, after a probable cause determination is made, and conciliation efforts are initiated, what specific meritorious charges are being brought against it, and more importantly, what voluntary changes it can make to avoid litigation. Here, we believe that the Commission correctly concluded that the Commission's original complaint failed to perform this function. As the above quoted portion of the Commission's original complaint shows, neither Crown nor

the Union were informed as to what specific acts of
conduct they were being *charged* with, but instead
simply informed, in essence, that they were
charged with a violation of the Act and that an in
gation would commence. Such a complaint doe
comply with the requirements of the Act. *United S*
Steel. Moreover, it is clear, in our view, that specif
legations of misconduct presented in withdrawn c
of action, or in investigative reports, is not a substitu
the filing of specific *charges* against an alleged dis
inator under the mandatory procedure outlined ab

Also, of course, we find no merit in Petitioner
sertion that the lack of specificity in the Commis
original complaint could be cured by amendmen
though Section 9 provides in part that "the compla
shall have the power reasonably and fairly to amen
complaint[,]" it would clearly be unreasonable and
to allow a complainant to toll the ninety day time
tation specified in Section 9, perhaps as in the pr
case by a number of years, through the filing of an
which does not comply with the mandatory re
ments of Section 9, and which does not accurate
form the alleged discriminator of the specific charg
ing advanced against it, and which would la
amended to enumerate specific charges after an
tigation and conciliation efforts had been complete
cordingly, we believe that the Commission, havin
cluded that the Commission's original complaint
specificity, properly concluded that it could not be
by amendment. *See Junk v. East End Fire Depar*
262 Pa. Superior Ct. 473, 396 A.2d 1269 (1978). W
believe, contrary to Petitioners' assertion in their
that this conclusion is not contrary to our Su
Court's decision in *Pennsylvania Human Rel*
Commission v. St. Joe Minerals Corp., 476 Pa. 30
A.2d 731 (1978). In *St. Joe Minerals*, the Supreme
simply concluded that an amended complaint,
added specific allegations of discriminatory conc

an earlier complaint, complied with the specificity requirement of Section 9. The court did not have before it, however, and did not decide, the question of whether the amended complaint was a new cause of action, or whether it was simply an amendment of the earlier complaint.

Petitioners additionally allege that the Commission erred as a matter of law by concluding that Elizabeth McNasby failed to satisfy the specificity requirement of Section 9 in that portion of her complaint brought on behalf of other female employees at Crown. As we noted above, however, that portion of the McNasby complaint simply stated that respondents have prevented her, "as well as all other females, from enjoying equal job opportunities. . . ." This statement clearly failed to notify either Crown or the Union of the specific practices being complained of.

Petitioners next allege that Crown and the Union waived their right to challenge the specificity of the Commission's original complaint, since they did not raise an objection to the specificity of that complaint until February 22, 1977, well after the filing of the amended complaint and Crown's answer thereto. Although we note that 1 Pa. Code §35.54 provides that a respondent may file a motion to dismiss "with his answer[,]" and that 1 Pa. Code §35.35 provides that answers, unless otherwise ordered, shall be filed within twenty days of the date of service of a complaint, since this issue was not raised below, and since there has been no reason shown why it could not have been raised below, it will not be addressed here. *See* Section 703(a) of the Administrative Agency Law, 2 Pa. C.S. §703(a).

The next allegation of error advanced by Petitioners is their assertion that their due process and equal protection rights were violated by the Commission's failure to permit the correction of the Commission's original complaint. In support of this contention, Petitioners rely on the recent decision of the United States Supreme

Court in *Logan v. Zimmerman Brush Co.*, 455
(1982). We believe that this case is clearly dis
able.

In *Logan*, a complainant filed a timely c
with the Illinois Fair Employment Practices Cor
(Commission) alleging that he had been discr
against on the basis of a physical handicap un
ability. The applicable Illinois statutory law prov
once such a complaint was filed, the Commissi
convene a factfinding conference within 120
parently through inadvertence, this conferenc
held until 138 days after the filing of the compl
the respondent subsequently moved to dismis
tion on this basis. When the Commission ref
respondent petitioned the Illinois Supreme C
writ of prohibition, and that court subsequently
the complainant's petition had to be dismissed
further appeal, however, the United States
Court reversed. In its majority opinion, the
Court concluded that the right to pursue a di
tion complaint under the applicable Illinois sta
was a species of property right protected by the
ess clause of the fourteenth amendment, and
complainant's due process rights had been de
the dismissal of his complaint since the com
interest in pursuing his complaint was paramo
interest the state might have in conducting co
within 120 days. In a separate concurring
authored by Justice Blackmun and joined in
other justices, Justice Blackmun additionally
that the Illinois statute's 120 day hearing pro
lated the equal protection clause of the Uni
Constitution, since there was no rational bas
tinguishing those complaints processed by the
sion within 120 days, and those which were
later. Here, even if we were to assume that th
file a discrimination complaint under the pro
the Act is a species of protected property right

not be deprived by an arbitrary procedural rule not rationally related to any compelling state interest, the fact remains that the original complaint in this case was filed by the Commission, and not the Petitioners here, and did not purport to be brought on behalf of any specific individuals or class of individuals. Hence, we do not believe that Petitioners have any constitutionally protected interest in the Commission's original complaint. Furthermore, even if Petitioners had such an interest, we believe that the Act's specificity requirement is rationally related to the state's interest in having respondents adequately informed of the specific charges being brought against them prior to the initiation of investigations and conciliation efforts. We reject, therefore, Petitioners' due process and equal protection arguments.

Petitioners finally make two allegations of abuse of discretion by the Commission: (1) its failure to award monetary damages to female employes for periods of time prior to July 30, 1975; and (2) in relieving the Union of joint liability for the monetary damages awarded, since it specifically found that the Union aided and abetted the discriminatory job classification and seniority scheme which led to those damages. We disagree with both contentions.

First of all, as to both allegations, we must note that the Commission's power to fashion remedies is virtually plenary and exclusive. Section 9 of the Act provides, in relevant part that

> [i]f, upon all the evidence at the hearing, the Commission shall find that a respondent has engaged in or is engaging in any unlawful discriminatory practice as defined in this act, the Commission shall state its findings of fact, and issue and cause to be served . . . an order requiring such respondent to cease and desist from such unlawful discriminatory practice and to take such affirmative action including but not limited to hiring, reinstatement or upgrading of

> employes, with or without back pay . . .
> judgment of the Commission, will effe
> purposes of this act. . . .

As our Supreme Court noted in the case of *Pen*
Human Relations Commission v. Alto-Reste
etery Association, 453 Pa. 124, 306 A.2d 881 (
scope of review of a Commission decision to o
ticular remedy or not is limited. There the c
"that the expertise of the Commission in fashi
edies is not to be lightly regarded[,]" *id.* at 134
at 887, and concluded that Commission orde
ing to remedies should not be disturbed on ap
less it can be shown that the order is a patent
achieve ends other than those which can fairl
effectuate the policies of the Act.' " *Id.* at 134
at 887 (emphasis in original) (quoting *Firebo*
Products Corp. v. N.L.R.B., 379 U.S. 203, 21
Hence, the question that is before us is w
Commission's refusal to award monetary dam
period of more than five months is a patent
achieve an end other than one which can fairl
effectuate the policies of the Act.

Bearing in mind that the Commission's d
prescribe remedies, because of the Commis
not our, expertise in such matters, is broad
accomplish whatever overall relief will effe
purposes of the Act, we cannot say that th
relief granted here was an abuse of discretion
cannot substitute our view for the discretio
ments of the Commission in limiting moneta
to the period July 30, 1975 to December 31, 19
of its extensive grants of injunctive relief. A
find no abuse of discretion cognizable by
Commission's judgment in not making the U
liable for the monetary damages awarded, si
lieve that the Commission could have reaso
cluded that it was unfair to make the dues pa

bers of that Union ultimately responsible for the monetary award, and since there is no indication of record that Crown, a substantial company, will not be able to pay the monetary award.

Alexander F. Barbieri, *Judge*

JOAN L. MURPHY et al.,	:	In
Petitioners	:	Comm
	:	Co
v.	:	Penn
	:	
COMMONWEALTH OF PENNSYLVANIA,	:	
PENNSYLVANIA HUMAN RELATIONS COMMISSION,	:	No
Respondent	:	C.D

ORDER

NOW, September 28, 1983, the order of sylvania Human Relations Commission in the tioned matter dated May 10, 1982, is affirme

Alexander F. Barb

SUPREME COURT OF PENNSYLVANIA
Eastern District

JOAN L. MURPHY, et al.,	:	
Appellants	:	No. 2 E.D.
vs.	:	APPEAL
COMMONWEALTH	:	DOCKET, 1984
OF PENNSYLVANIA,	:	
PENNSYLVANIA HUMAN	:	
RELATIONS COMMISSION, et al.	:	
Appellees	:	

JUDGMENT

ON CONSIDERATION WHEREOF, it is now he ordered and adjudged by this Court that the ORDER the COMMONWEALTH COURT, be, and the same hereby AFFIRMED.

BY THE COURT:

Marlene F. Lachman, Esq.
Prothonotary

Dated: JANUARY 9, 1985

[J-115-84]
IN THE SUPREME COURT OF PENNSY
EASTERN DISTRICT

JOAN L. MURPHY, LORRAINE R. MASON, EDITH L. McGRODY, MARIE PEKALA, HENRIETTA ELLIOTT, CATHERINE BERES, VIRGINIA KNOWLES, ANN JACYSZYN, PEGGY FELMEY, ELEANOR NEYER, DORIS YOCUM & ELIZABETH McNASBY, on behalf of themselves and all others similarly situated, *Appellants*	:	No. 2 E. Dkt. Appeal Orde Comm Court a C.D affirm Orde Penn Human Comm Dock E-40 E- 77 Pa. 291, 45 (1 AR JUNE
vs	:	
COMMONWEALTH OF PENNSYLVANIA, PENNSYLVANIA HUMAN RELATIONS COMMISSION, and CROWN CORK AND SEAL COMPANY, INC., and SHEET METAL PRODUCTION WORKERS' UNION, LOCAL 266, *Appellees*	:	

OPINION

MR. JUSTICE McDERMOTT FILED: JANUA

Appellants have brought this appeal to cl order of the Commonwealth Court which aff cision of the Pennsylvania Human Relation sion.

In February of 1970, eleven female employees o Crown Cork and Seal, Inc. (Company) went to the of fices of the Pennsylvania Human Relations Commissio to complain that the Company, with the assistance an acquiesence of their union, the Sheet Metal Productio Workers Union-Local 266 (Union), was discriminatin against them and all other female production employee on the basis of sex. At this time these women voiced thei displeasure over the Company's and Union's actions, bu no one among them filed an individual complaint.

In April, 1970, one of the eleven women, Mary Ma tin, filed an individual complaint. However, this com plaint was withdrawn in October of that same year.

In December 1970, based in part on the informatio brought to its attention by the above parties, the Com mission, *on its own motion*, filed a "Commissioner Complaint" against the Company and the Union. Th complaint consisted of two pages and made general a legations concerning "unlawful employment practices." There was no mentioned in this complaint of any of th individual complainants.

On June 11, 1971, appellant Elizabeth McNas filed an individual complaint, in which she alleged th she was "laid off without regard to her seniority from h position of inspector, because of her sex."[2] This con

1. The relevant allegations as contained in paragraph 3 wer On or about to wit (sic), December 22, 1970 the complaina alleges that the respondent Company engages in unlawful e ployment practices which are discriminatory with respect to male employees, because of their sex, in hiring, assignme seniority, transfer, salary, overtime, promotion, denial of tra ing and layoff. It is further alleged that the respondent Uni concurs in and aids and abets the discriminatory practices of t respondent Company.

2. She further alleged that:

. . . the respondents consorted in the lay-off of the complaina because of her sex, FEMALE, and have prevented her, as w as all other females, from enjoying equal job opportunities Crown Cork and Seal Company.

plaint was eventually joined with the 1970 Commissioner's complaint for purposes of administrative processing.

In April, 1972, the Commission, acting in accordance with the Pennsylvania Human Relations Act (Act),[3] issued a finding of probable cause and initiated conciliation efforts. *See* 43 P.S. §959. By mid 1972, counsel for both the Union and the Company had entered appearances.

On October 16, 1974, this Court handed down a decision in *Pennsylvania Human Relations Commission v. U.S. Steel Corp.*, 458 Pa. 559, 325 A.2d 910 (1974). Therein we held that a Commissioner's complaint that merely stated general allegations of discriminatory practices was invalid, in that such a complaint failed to satisfy the "particularity" requirement of Section 9 of the Act, 43 P.S. §959. This decision was relevant in the present context since the Commissioner's complaint which instituted this action was substantially the same as the one dismissed in *U.S. Steel.*

On October 27, 1975, the Commission filed a second complaint against the Company and the Union. This second complaint designated as an "Amended Complaint," set forth detailed allegations of unlawful sex discrimination, and listed the following women as individual complainants: Eleanor Neyer, Joan Murphy, Sarah Cooper, Margaret Felmey, Lorraine Mason, Virginia Knowles, Doris Yocum, Edith McGrody, Marie Pekala, Theresa Cheplick, Henrietta Hunter, Ann Jacyzyn and Theresa Reed. Despite having had no contact with the Commission for almost five years, these women had been contacted by investigators of the Commission for the purpose of filing this "Amended Complaint," and were requested to file affidavits in support of the discriminatory charges. However, at the time this second complaint was

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3. Act of October 27, 1955, P.L. 744, §9, as amended.

filed only Theresa Reed was employed by the Company.[4]

This "Amended Complaint" was also joined with the original complaint (and the McNasby complaint) for purposes of administrative processing. Thereafter, on April 19, 1976, a finding of probable cause was made by the Commission staff.

Responding to this "Amended Complaint" the Company filed an answer and new matter. The Union declined to file an answer, but submitted a letter indicating that they did not believe that an answer was required.

Pursuant to statute the Commission undertook conciliation efforts, which failed; and a public hearing was directed to be held before a panel of Commissioners. Due to extensive prehearing litigation no hearing was held until October 30, 1978. Once begun, however, the hearings required 37 days.

Prior to these hearings, in February 1977, the Company had filed a motion to dismiss the "Amended Complaint." In the memorandum of law accompanying this motion, the Company argued that the original 1970 complaint lacked sufficient particularity, and therefore both complaints should be dismissed. The Commission reserved its ruling on this motion pending completion of the public hearing.

On September 29, 1981, the Commissioners issued their "Findings of Fact, Conclusions of Law, Opinion and Final Order." Their ultimate conclusion was that the Company had engaged in practices which constituted "one of the most blatant patterns of sex discriminatory practices that has ever been brought to (the) Commissioners' attention."[5] Commissioners' Opinion, Dkt. Nos. E-4027; E-4249, p. 38.

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4. Ms. Jacyzyn was laid off in 1966, while complainants Neyer, Murphy, Felmey, Mason, Knowles, Yocum, McGrody, Pekala, Cheplick and Hunter were laid off for the final time between 1969 and 1971. Ms. Cooper retired on disability in February, 1974.

5. This conclusion was not appealed by the Company and its validity is not an issue in this action.

The Commissioners also concluded that: (1) the original complaint was insufficiently pleaded and was a "nullity"; (2) the McNasby complaint was sufficiently particular but applicable only to her as an individual complainant; and (3) the "Amended Complaint" was effectively an original complaint unto itself. They further concluded that, as for the remaining complainants, the 90 day statute of limitation set out in Section 9 of the Act, 43 P.S. §959, barred all but Theresa Reed from recovering any tangible relief.

The Commission ordered monetary relief for Elizabeth McNasby, to be computed from the date she filed her complaint through December 31, 1975; and also ordered monetary relief for "the class of females who were employed or who possessed employment rights at Crown's Plant No. 1, production and maintenance unit during the period July 30, 1975 to December 31, 1975." *Id.* at 59.

The Commission also directed the company to implement an affirmative action program; to make good faith offers of reinstatement to each female employee who was laid off while a male of lesser seniority was retained; and to integrate their shift, department, and plant seniority systems.

Though the Commission absolved the Union of any liability for the award of monetary relief,[6] the Union was ordered to: conduct its activities in a non-discriminatory manner; cease collecting union dues while its members were laid off; and reimburse all union dues and reinstatement fees paid by female employees who were on layoff status or who were reinstated at any time between July 30, 1975 and the effective date of the Commissioners' order.

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6. The Commissioners based this decision on their conclusion that it was the Company that was primarily responsible for the women's diminution in earnings.

Following this opinion and order a request for reconsideration was filed by the Commission's staff. This request was granted on November 27, 1981, and counsel was permitted to submit further legal arguments: one of which was the purported waiver by the Company and the Union of raising the issue of the defective original complaint. Thereafter a supplementary opinion and order were issued, affirming the original order, with slight modifications. Complainants appealed this order to the Commonwealth Court, which affirmed.[7] Upon petition we granted allocatur. We also affirm.

In pursuing this appeal the complainants have raised the following issues: whether the 1970 Commissioner's complaint tolled the statute of limitations; whether the "Amended Complaint" dated back to the original complaint and effectively cured the defective pleading; whether the failure of appellants to raise, prior to their petition for reconsideration, the timeliness of the Company's objection to the defective pleading, was in itself a waiver; whether the Commissioners should have found that all the violations were of a continuing nature; whether the order of the Commissioners, which denied eleven women of any relief, constituted a violation of their due process rights and/or the equal protection clause; whether the relief granted by the Commissioners was too limited in scope; and whether the Commissioners abused their discretion in failing to declare the Union to be jointly liable for monetary damages.

Basically these issues focus on the Commissioners' decision regarding the defective original complaint and the scope of the remedy.

Firstly, it is clear that the original complaint, being substantially similar to the one of which we disapproved in *U.S. Steel, supra,* was defective; and appellants do not seriously contend otherwise. Secondly, it is equally clear

7. This Opinion appears at 77 Pa. Cmwlth. 291, 456 A.2d 740 (1983).

that the power of the Human Relations Commissi
sults from the legislature's delegation of such pow
such the limits of that power must be strictly cons
See Pa. Human Relations Commission v. St. Joe M
als Corp., 476 Pa. 302, 382 A.2d 731 (1978). *See al*
Human Relations Commission v. Zamantakis, 4
454, 387 A.2d 70 (1978).

By statute the jurisdiction of the Human Rel
Commission may be invoked by filing a verified
plaint "which shall set forth the particulars" of th
criminatory practice complained of. 43 P.S. §95
U.S. Steel, supra. A filing which does not compl
these strictures improperly invokes the Commissio
risdiction, and is in fact a nullity.

Appellants have argued that the original pl
sufficiently put the Company and Union on notic
like a praecipe for a writ of summons, should be
cient to toll the statute of limitation. We find no m
this argument. As stated above, proceedings befo
Human Relations Commission are strictly gover
the statute devised by our legislature. They are
distinct from proceedings pursuant to the Rules
Procedure, and decisions thereunder are not disp
of proceedings before the Commission.

Since the 1970 complaint was defective, the
mission was without jurisdiction to rule on the m
this case until the properly pleaded "Amended
plaint," and thus we find no merit in appellant's
argument. Similarly we dismiss their contention t
second pleading corrected the first, since the "Am
Complaint" could not properly be construed to co
post facto jurisdiction for a period beyond the st
limit.

We also find meritless appellants' waiver
Since the Commission's jurisdiction exists so
grant of statue, objections to complaints which
properly invoke that jurisdiction are in the natur
jections to subject matter jurisdiction, which

raised at any time. *See Pa. Human Relations Commission v. Alto Reste Cemetary Association.*, 453 Pa. 124, 128 n.4, 306 A.2d 881, 884 n.4 (1973). Additionally, the objections which were filed by the respondents were not untimely according to the accepted standards of practice before the Human Relations Commission. *See* Commissioners' Supplementary Opinion and Order, Dkt. Nos. E-4027; E-4249 p.8.

Complainants have also challenged the Commission's dismissal of the 1970 complaint on constitutional grounds, relying on the recent United States Supreme Court case of *Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982). In *Logan* the complainant had filed an individual complaint with the Illinois Fair Employment Practices Commission. Thereafter, through an administrative oversight, the Commission failed to schedule a hearing on the complaint until five days after the statutory period for convening such a hearing had run. The Illinois Supreme Court had held that Logan's complaint must be dismissed due to the failure of the Commission to schedule the hearing properly. The United States Supreme Court reversed, holding that the dismissal of Logan's claim under these circumstances constituted a violation of his due process rights.[8]

We have no quarrel with the wisdom of the *Logan* decision. However, it is inapplicable to the present situation. Unlike Logan the complainants here, with the exception of Ms. McNasby, never filed complaints in 1970. In this regard the observation of the majority, per the opinion of Mr. Justice Blackmun, is instructive:

> The State may erect reasonable procedural requirements for triggering the right to an adjudication, be they statutes of limitations (citation omitted) or, in an appropriate case, filing fees (citation omitted). And the State certainly accords *due* process when it

8. Four members of the court concluded that Logan's equal protection rights were also violated.

terminates a claim for failure to comply with a r
sonable procedural or evidentiary rule. (Citati
omitted.) (Emphasis in original.)

Id. at 437.

Complainants have sought to circumvent the f
that they did not file individual complaints by argu
that their claim was preserved because
Commissioner's complaint represented their intere
This argument misperceives the nature of a compl
filed by the Commission on its own motion. Such a c
plaint, while often benefiting individual claimants
filed *on behalf of the Commonwealth*, as opposed to
dividual claimants, with the intent of vindicating
public interest by eliminating discriminatory practi
Thus, the complainants here were not the real partie
interest in the 1970 complaint and have no founda
for their constitutional arguments. *See generally Sm*
v. Toll, 373 Pa. 127, 137, 94 A.2d 764 (1953); *see a*
Spires v. Hanover Fire Insurance Co., 364 Pa. 52,
A.2d 828 (1950).

Appellant's final arguments go to the adequac
the Commission's award. We have consistently held
the Commissioners, when fashioning an award, h
broad discretion and their actions are entitled to de
ence by a reviewing court. *Pa. Human Relations C*
mission v. Zamatakis, supra. In *Pa. Human Relat*
Commission v. Alto Reste Park, supra, we adopted
following standard of review. "The (Commission's) o
will not be disturbed 'unless it can be shown that
order is a patent attempt to achieve ends other than
fairly be said to effectuate the policies of the Act'
(citation omitted). *Id.* at 134, 306 A.2d at 887.

The decision of the Commissioners to limit
award of monetary damages to 90 days prior to the f
of the "Amended Complaint" represented an exerci
the discretion which they hve been expressly delega
That decision was obviously influenced by the fact

other than Elizabeth McNasby, no individual claimant pressed her claim until prodded by the Commission. In these circumstances the Commissioner's limitation of benefits does not appear to be an abuse of discretion.

The basis for the Commissioner's refusal to conclude that an award should be entered for that period after 1975, was simply that there was insufficient evidence to uphold such a finding. Our review of the record supports that conclusion.

Complainants also dispute the Commissioner's decision to absolve the Union of responsibility for monetary damages. As stated above their action in this regard was based on the conclusion that it was the Company's actions which were primarily responsible for the employees' lost wages and opportunities. Given the above cited standard of review we find no abuse in the Commission's award, especially since the Commissioners ordered affirmative injunctive relief to correct the existing problems.

We affirm the Order of the Commonwealth Court.

Mr. Chief Justice Nix files a dissenting opinion.

[J-115-1984]

IN THE SUPREME COURT OF PENNSYLV
EASTERN DISTRICT

JOAN L. MURPHY, LORRAINE R. MASON, EDITH L. McGRODY, MARIE PEKALA, HENRIETTA ELLIOTT, CATHERINE BERES, VIRGINIA KNOWLES, ANN JACYSZYN, PEGGY FELMEY, ELEANOR NEYER, DORIS YOCUM & ELIZABETH McNASBY, on behalf of themselves and all others similarly situated, *Appellants*	:	No. 2 E. Dkt. Appeal Order Commo Court at C.D. affirm Order Penns Human Comm Dock E-40 E-
vs	:	
COMMONWEALTH OF PENNSYLVANIA, PENNSYLVANIA HUMAN RELATIONS COMMISSION, and CROWN CORK AND SEAL COMPANY, INC., and SHEET METAL PRODUCTION WORKERS' UNION, LOCAL 266, *Appellees*	:	77 Pa. 291, 456 (19 ARC JUNE

DISSENTING OPINION

NIX, C. J. FILED: JANUAR

I dissent. Once again the majority of this C
to strangle the spirit of modern administrativ
the trappings of the more technical and forma
of pleadings associated with early common law
by Mr. Justice Roberts in his dissent to *Per*

Human Relations Commission v. U.S. Steel Corp., 458 Pa. 559, 325 A.2d 910 (1974), "[t]his sterile and unrealistic approach results in a restrictive construction of the Pennsylvania Human Relations Act which may cripple the Commonwealth's efforts to correct the more subtle forms of discrimination." *Id.* at 567, 325 A.2d at 914 (Roberts, J., dissenting, joined by Nix, J.).

In the instant case the 1970 complaint filed by the Commission alleged:

> On or about to wit, December 22, 1970 the complainant alleges that the respondent Company engages in unlawful employment practices which are discriminatory with respect to female employes, because of their sex, in hiring, assignment, seniority, transfer, salary, overtime, promotion, denial of training, and layoff. It is further alleged that the respondent Union concurs in and aids and abets the discriminatory practices of the respondent Company.

Unlike the general allegation of discrimination held insufficient by all members of this Court in *U.S. Steel Corp.*,[1] *supra* at 563, 570, 325 A.2d at 912, 916, the complaint filed in this case adequately put the defendant on notice that the Commission intended to conduct an investigation and hearing regarding sex discrimination against its female employees. The term "set forth the

1. The comparable section of the complaint held insufficient in Pa. Human Relations Commission v. U.S. Steel Corp., 458 Pa. 559, 325 A.2d 910 (1974), read:

> The Respondent has in the past and continues until the present time to maintain a discriminatory system of recruitment, hiring, training, employment, compensation, promotion, demotion, job assignment or placement, transfer, layoff, retention, referral, dismissal, rehire, retirement, and pensions, and has otherwise discriminated in the past and continues until the present time to discriminate regarding terms, conditions and privileges of employment because of sex, race and national origin.

Id. at 562-63, 325 A.2d at 912.

particulars" as used in Section 9 of the Act
tober 27, 1955, P.L. 744 §9, *as amended*, 4
should not be read to mean that a statistical
quired in the original complaint.

The complaint in this case sufficiently
the employer had engaged in across-the-bo
ination against female employees. When, a
amply reflects,[2] an employer engages in
spread sex discrimination as was the case h
ficult to imagine how much more "particu
pleadings need be to provide the employer w
intent to investigate. Under the reasoning
the majority the complaint would resemble
port. Such specificity is absurd in light of
oftentimes in these cases the necessary "pa
information will not be disclosed until the in
completed.

I would rule, therefore, that initial comp
crimination cases brought by the Pennsylv
Relations Board need only give notice to:
resondent to lighten the burden of the inve
hearing process itself, and (2) encourage vo
pliance with the Act. *See U.S. Steel Corp.*, s
325 A.2d at 915 (Roberts, J., dissenting, jo
J.).

I further disagree with the majority's co
the Pennsylvania Human Relations Com
not represent the individual claimants' inte

---

2. Indeed the Pennsylvania Human Relatio
found as a conclusion of law that:

> At all times from July 9, 1969 to December 3
> engaged in a pattern and practice of discrimina
> the sex, female, of applicants and employes in
> signment, job transfer, compensation, layoff,
> layoff, on a continuing basis.

Pennsylania Human Relations Commission v.
Seal Co., P.H.R.C. Nos. E-4027, E-4249 (Aug.

files a complaint alleging discrimination.[3] If such is the case, then a complaint by the Commission is nothing more that a mere formality which can impose no monetary penalty upon the discriminating employer. Such a conclusion also is contrary to the holding of the United States Supreme Court in *Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982). *Logan* held that an individual's right to redress grievances through the adjudicatory procedures of a state agency charged with providing relief to citizens who have been unjustly injured by discrimination in employment is a species of property protected by the Due Process Clause. *Id.* at 431.

The Pennsylvania Human Relations Commission has the power and the duty "[t]o initiate, receive, investigate and pass upon complaints charging unlawful discriminatory practices." 43 P.S. §957(f). The eleven female employees who went to the Commission in February of 1970 thus had reason to believe that their rights were being vindicated by the Commission. Certainly claimants such as those before this Court have an interest in freedom from discrimination in employment, in back pay or other monetary relief, and in public vindication of their rights. They also have an interest in re

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3. The majority supported this proposition by citing Smiler v. Toll, 373 Pa. 127, 137, 94 A.2d 764 (1953) and Spires v. Hanover Fire Insurance Co., 364 Pa. 52, 70 A.2d 828 (1950). Neither of these cases, however, involved the situation where a public agency was charged with the duty to safeguard against constitutional violations. *Smiler* involved the issue of a real party in interest under a sealed contract and *Hanover Fire Insurance Co.* merely held that a third party beneficiary under a fire insurance policy must be named or referred to in the contract. We are not dealing with theories of contract in the instant case. Here we have the situation where a public agency has been established to safeguard the public against unlawful discriminatory practices. Since this Commission benefits the entire Commonwealth, it does not follow that individual complainants are not represented by the Commission. Rigid principles of contract law should not obstruct the legislative intent behind the establishment of the Pennsylvania Human Relations Commission.

dressing their grievances through the ad
agency that was established for that purpos
islature as an expert in the field of discrimin
the full benefits of an investigation and hea
vided by the Act. *Logan v. Zimmerman Brus*
at 431.

For the above reasons I would hold that
complaint filed by the Commission sufficie
the "particularity" requirement of Section 9
rights of the individual complainants were
the Commission. I would thus remand the
Commission for the award of back pay or oth
relief for the individual complainants not
with the finding that the original complain

IN THE
SUPREME COURT OF PENNSYLVANIA

JOAN L. MURPHY, LORRAINE R. MASON, EDITH L. McGRODY, MARIE PEKALA, HENRIETTA ELLIOTT, CATHERINE BERES, VIRGINIA KNOWLES, ANN JACYSZYN, PEGGY FELMEY, ELEANOR NEYER, DORIS YOCUM AND ELIZABETH McNASBY, on behalf of themselves and all others similarly situated.	:	
Appellants	:	
v.	:	
COMMONWEALTH OF PENNSYLVANIA PENNSYLVANIA HUMAN RELATIONS COMMISSION,	:	
Appellees	:	
and	:	
CROWN CORK AND SEAL COMPANY, INC. AND SHEET METAL PRODUCTION WORKERS' UNION, LOCAL 266	:	641 E.D. Allo
Intervenors	:	Docket 19

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

NOTICE is hereby given that Joan L. Murphy, Lorraine R. Mason, Edith L. McGrody, Marie Pekala, Henrietta Elliott, Catherine Beres, Virginia Knowles, Ann Jacyszyn, Peggy Felmey, Eleanor Neyer, Doris Yocum and Elizabeth McNasby hereby appeal to the Supreme Court of the United States from the Final Judgment of the Supreme Court of Pennsylvania affirming the final judgment of the Commonwealth Court of Pennsylvania (77 Pa. Commw. Ct. 291 (1983) and the final judgment of the Pennsylvania Human Relations Commission. The said judgment of the Supreme Court of Pennsylvania was entered on January 9, 1985.

This appeal is taken pursuant to 28 U.S.C. §1257(2).

Respectfully submitted,

/s/ ALAN M. LERNER

Dated: April 4, 1985

Alan M. Lerner
Jeffrey Ivan Pasek
22nd Floor
Philadelphia Savings Fund Building
12 South 12th Street
Philadelphia, PA 19107
(215) 922-1300

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and

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Philadelphia, PA 19103
(215) 545-1200

cc: Ellen K. Barry, Esquire
Jerome A. Hoffman, Esquire
Stephen P. Gallagher, Esquire
Mark P. Muller, Esquire

A-106

February 7. 1970
Phila.. Pa.

Dear Mrs. Henderson:

. I am writing this letter in regards of discrimination of sex at Crown Cork and Seal.

Around three months ago November 1. 1969. 95 percent of the girls filed a grievance complaint and gave it to the president of our union which he completely ignored until the girls asked him when he was going to give us a meeting. At first he told the girls it was too near the holidays and he couldn't get a hall. Later he told them when we have a meeting regarding our contract he would make arrangements. When he posted the notice. he had on the notice "Proposals for New Contract." A special meeting will be held for this purpose and this purpose only. No other orders of business will be taken up at this time.

Our contract is coming up this April 5th and we girls are worried that he will have things in the contract that will do away with the women. He will only tell us what he wants us to know and when we get our book about a year later things will be in there we don't know anything about.

Girls with 19 and 20 years get laid off and they were hiring new men. At the present time girls with 17 and 18 years are laid off now and men with only 2 months are working.

There are a lot of jobs the girls can do but they will not give us a chance.

In 40 Dept. the girls packed cans in cartons from a machine also hand packed into bulk cartons bag. Then they changed to bulk pallets which is a double rake with about forty cans on a rake. So the men took that over. Now they put it on palletizers which consist of pushing buttons and they refuse to give us a chance on it. Which rightfully belongs to the girls in the first place.

Also when there is overtime the head shop steward trys and bring men on women's jobs instead of asking us first.

At one time we had applied. They did away with that job but gave it to the clerks which consist of all men. Now they make tickets for the jobs which any girl can do that job.

There is a girl inspector which has 17 years with the company she is laid off but they put a new man on her job which worked in 40 Dept. with only 1 1/2 years with the company.

Mrs. Henderson our main concern right now is that they are doing away with women and placing men on our jobs. When some of the girls went to the head shop stewards they laughed right in their faces. And the company is going right along with them.

One of the girls went to the personnel manager and asked him about going on the palletizers and he said. I don't see why not and asked her if she talked to the union about it and she told him what we did As of now she hasn't received an answer from the company or union.

The vice president holds two jobs in the union. He also is head shop steward on day work. We don't think it is right.

I'm sending you this week's lay off slip to prove to you what I am saying is the truth.

There are so many other things but the people on day, second and third shifts can tell you themselves.

We would appreciate any help you can give us as things have gone too far.

Mrs. Henderson the trouble is we are afraid to sign any one girl's name against the union because they will find one way or another to get us fired or make it rough for us. They already know that we are asking for help and they don't like it at all.

Thanking you for any help you can give us.

A-108

Crown Cork & Seal
9300 Ashton Road
Philadelphia. PA 19114

2/7/70

I remain.

Mary Martin
9301 Ashton Road. Apt. 10
Philadelphia. PA 19114

Phone OR-6-2515

A-109

February 27, 1970

Miss Mary Martin
9303 Ashton Road — Apt. 10
Philadelphia, Pennsylvania 19114

Dear Miss Martin:

This is to acknowledge receipt of your letter of February 7, 1970 relative to your situation at Crown Cork and Seal, which has been forwarded to me for reply.

The information you have submitted has been forwarded to our Philadelphia Regional Office. A Field Representative from that office will contact you in the near future in order to secure more detailed information and to determine this Commission's jurisdiction in this matter.

We are returning the original copy of your Lay Off Notice and Grievance Slip for your records. Any additional written material pertinent to your complaint which you may have would be helpful to our Field Representative.

Thank you for bringing this situation to our attention.

Sincerely yours,

Virginia T. Fichtel
Acting Director of Compliance

COMMONWEALTH OF PENNSYLVANIA

PENNSYLVANIA HUMAN RELATIONS COMMISSI

Mary Martin :
(Complainant)

: COMPLAIN

: DOCKET NO. E-3

v. :

Crown Cork and Seal Company, Inc. :
(Respondent)

COMPLAINT

---

1. The complainant herein is Mary Martin, 9 Ashton Road, Philadelphia, Pa.

2. The respondent herein is Crown Cork and Company, Inc., 9300 Ashton Road, Philadelphia, Pa

3. On or about to wit, April 13, 1970, the respon refused to give the complainant, overtime work w giving it to men although she has seniority over employees in her job classification; and has gene treated the complainant, as well as other women, di ently from men because of her sex, female.

4. Such action by the respondent constitutes an lawful discriminatory practice and is in violation (check below according to complaint).

(x) Section 5, Sub-Section(s) (a) of the A October 27, 1955, P.L. 744, as amende the Act of February 28, 1961, P.L. known as the Pennsylvania Human R tions Act.

( ) Section 4, Sub-Section(s) ____of the A July 17, 1961, P.L. ____, known as

Pennsylvania Fair Educational Opportunities Act.

5. No other action based on the allegations set forth in this complaint has been instituted by the complainant in any court or before any other commission within this Commonwealth, except as follows:

"None

(Insert "none", if applicable.)

6. The unlawful discriminatory practice referred to in this complaint is of a continuing nature which has persisted up to and including the present time. (To be crossed out if not applicable.)

Sworn to and subscribed :
before me this 15 day :
of April, 1970. :

/s/
Notary Public
My Commission Expires:

/s/ Mary Martin
(Signature of Complainant)

COMMONWEALTH OF PENNSYLVANIA

PENNSYLVANIA HUMAN RELATIONS COMM

Mary Martin :
(Complainant)
:
COMPLA
:
v. DOCKET NO.
:
Can Workers Union. Local 266
(Sheet Metal Worker's Intl. :
Assn.. AFL-CIO)
(Respondent) :

COMPLAINT

---

1. The complainant herein is Mary Marti
Ashton Road. Philadelphia. Pa.

2. The respondent herein is Can Workers
Local 266. (Sheet Metal Worker's Intl. Assn.. Al
6445 Frankford Avenue. Philadelphia. Pa. 191

3. On or about to wit. (April 13. 1970 the c
ant alleges the Union failed to represent her bec
Union President. Herman Tedeschi. seized h
ance slip from Pat Cioa. Chief Steward lst Shift.
at John Librizzi. Head Steward. 3rd Shift. and cu
as he walked away; and that this refusal to acce
ances is of a continuing nature against herself a
women because of their sex. female.

4. Such action by the respondent constitut
lawful discriminatory practice and is in viol
(check below according to complaint).

(x) Section 5. Sub-Section(s) (c) of th
October 27. 1955. P.L. 744. as am

the Act of February 28, 1961, P.L. 47, known as the Pennsylvania Human Relations Act.

( ) Section 4. Sub-Section(s) ____ of the Act of July 17, 1961, P.L. ____, known as the Pennsylvania Fair Educational Opportunities Act.

5. No other action based on the allegations set forth in this Complaint has been instituted by the complainant in any court or before any other commission within this Commonwealth, except as follows:

"None"

(Insert "none", if applicable.)

6. The unlawful discriminatory practice referred to in this Complaint is of a continuing nature which has persisted up to and including the present time. (To be crossed out if not applicable.)

Sworn to and subscribed :
before me this 15 day :
of April, 1970. :

/s/
Notary Public
My Commission Expires:

/s/ Mary Martin
(Signature of Complainant)

Inquiry

Eleven (11) women came to the RO
plaint against their Company and Union.

Mary Martin — 930 Ashton Rd., Ph
OR 6-2515 — 21 years

Virginia Knowles — 3130 Custer St
phia, Pa. NE 4-687
seniority

Marie Pekala — 6370 Marsden St
phia, Pa., no phone —
iority

Anna Beldick — 817 N. Taylor St
phia, Pa., PO 8-2083 —
iority

Dorothea Gribbin — 4904 Penn St
phia, Pa., PI 3-787
seniority

Helen Dawson — 187 Gehrig Aven
New Jersey, CL 6-12
seniority

Dolores Harrison — 6318 Algard S
phia, Pa., DE 3-37
seniority

Veronika Miczan — 6833 Oakley S
phia, Pa., no phon
seniority

Joan L. Murphy — 2610 Almond S
phia, Pa., NE 4-27
seniority

Constance Pacini — 933 Tree Stree
Pa., DE 6-3675 —
iority

Helen Steenson — 1220 E. Sedgle
adelphia, Pa. JE 5
years seniority

They work for: Crown Cork and Seal Company I
9300 Ashton Road
Philadelphia, Pa.

Their Union is: Can Workers Union, Local 266
Sheet Metal Workers' Int'l Ass
AFL-CIO
6445 Frankford Avenue
Philadelphia, PA
DE 1-3220

The women allege they are being discrimina against because of their sex. They complained to the U ion six years ago but were ignored. They also came to State Building in Philadelphia to complain but recei no help. It was not ascertained to which department t came in the State Building.

The FR gave each person present a book of PH Laws with the sex amendment insert and explained law and where the sex amendment is now applicabl

The incidents of discrimination are the followi The Company has become highly automated. Most erations are push button. As the new machines brought in the women who operated the older ones replaced by men. New machines are simpler and eas less strenuous, to operate. When women ask supervis to be allowed to learn the new operations (specifica the "palletizer") they are told, "That's a man's job." T denial of training and replacement by men is happen in many other departments.

The women stated the object of this policy is to place women with men.

After denying them the opportunity to learn new erations and replacing the women with men the C pany began to lay them off on a Lack-of-Work basis. were hired in the place of women who had been laid

Women are not allowed to work overtime. Men given all overtime work.

Men are started at a higher rate of pay
who are doing the same work.

Some told their personal experiences:
Lead Girl in 20 Dept., and Virginia Knowles
Dept., said they were laid-off for lack-of-w
observed that the only men laid-off on th
those with one (1) or two (2) weeks seniorit
twenty-one (21) years seniority, Knowles

Helen Steenson, with sixteen and on
years seniority, was laid off for lack-of-w
been trained as an Inspector. This job rece
pay rate than that of Seamer Operator, for
returned to work on a callback, as a Sear
When she asked to be allowed to work as
(openings for) she was told she could not
had been laid-off too much.

Marie Picala (17½ years sen.) was n
work overtime. She spoke to Eddie Lavin, S
He told her there was no overtime work i
ment although she observed there was a
were brought in to do it.

The women had brought a Union
tached), a Grievance Slip dated Novembe
signatures (See Attachment 1), and a letter
ion dated January 20, 1970 (See Attachme
of the Union Contract has Article IX which
crimination" and states there will be none
race, color, national origin, religion or se
ance was presented to the Union represe
unknown) on November 1, 1970. Nothin
process or recognize this grievance, despi
of women who signed, almost every wome
alleged those present. Later, after the grie
nored, several women went to the office
President, Herman Tedeschi. They were n
hours, and eventually left without seeing h
grievances. The letter from the Union was
ployees and requests all Union membe

meeting about the new contract. It states that no o
order of business will be taken up at the meeting.
assembled women called this letter "a slap in the fa
They want to file a complaint against the Union for
ure to represent (them).

The FR asked about Union Leadership. There
about fifty (50) top people, including shop stewards.
(2) shop stewards are female. There are twelve (12
the Executive Board, of whom three (3) are women.
(1) of these women is the Recording Secretary. The
asked the titles of the remaining two (2) women. T
are not known. The FR asked if these women ha
were known to have, any real power, and influence i
decision-making process, or if they helped to make
icy. The women present insisted (alleged) they do
To sum up: Five (5) females are in positions of s
authority. Five (5) out of fifty (50). One (1) is the
cording Secretary. Two (2) are Shop Stewards.

The women commented about the change in U
membership over the years. Out of approximately
members about 1/4 are female. Once the Union was
dominantly female. But three (3) or four (4) years
women with more than fifteen (15) years seniority l
because they had been laid-off more than one (1)
Because women are being forced to leave the Com
and being laid-off the Union membership reflects
change.

The FR asked if there are any women in supervi
either on the floor (plant) or in the office. None, it
stated. The highest position for a woman is as Lead

CS King was called in and questioned those pr
about privileges and training. There are thirty (30)
training for all new employees. He then asked abou
leave and benefits. These are the same for all wor
male or female. It appeared that the substance o
complaint against the Company deals with den
training and layoff. With the Union it is failure to
resent.

CS King explained the method of filing a complaint. When it was learned their names would appear on a complaint those present expressed great fear of reprisal. Although the CS and the FR explained that the law protects the complainant, that it is illegal to take revenge on a complaint or complainants, the women insisted "They would find some way to punish us." They came to PHRC believing they could make an anonymous complaint. The CS said it might be possible to file a PHRC complaint, and left the room to call Harrisburg for instructions.

During the absence of the CS the women asked the FR if the Company could be made to guarantee thirty (30) days of work from a call-back after layoff. Everyone present had experienced long periods of lay-off, and some were presently laid-off. The FR told them this was something to demand as part of an adjustment by the Company, after an investigation had shown cause.

The CS returned saying he had talked to Elizabeth Henderson, Deputy Director about the complaint, the layoffs, etc. He was told not to file a PHRC complaint because, for one thing PHRC has had problems with group complaints. All that would be necessary is one name on a complaint against the Union, however, with the other women used as witnesses. This person could be someone with a specific grievance. All the women present said they have a grievance but none wanted her name on a complaint. CS King asked if someone who had been laid-off and replaced by a man would be willing to file a complaint. Again the answer was no because of fear of reprisal. Although these women have not got much of a job or jobs they are afraid of losing them by causing trouble to the Company, and particulary to the Union.

All present (complainants) were surprised and dismayed by this turn of events. They could not understand why their names and their jobs could not be protected by the filing of an anonymous complaint. CS King was asked by those present what they could do about their

grievance, now that PHRC would not accept an anonymous complaint and would not initiate its own. He suggested they write to Mrs. Henderson requesting her to have PHRC initiate their complaint, and to have as many aggrieved females as possible sign the letter. Also, to send a similar letter to the Governor. The women left the RO with plans to follow the advice of CS King.

Ellen L. Wooters

Field Representative

Attachment #24 E
E 3696
June 18, 1970

Dear Sir:

I feel there is discrimination in our plant regarding female employees. There are quite a few jobs in this plant that could be covered by females if given the opportunity. The women in 40 dept. have asked many times for a chance on the pallitizers. But have never been allowed to try them. They were given, and do run, the depalletizer which is almost the same operation. But this job rarely runs.

Our women have seniority over most of the men in our dept. but have very few jobs because almost everything runs in pallets. The women are put in our repair area, while men with a year or even six months are on a line. There are also sweeping and cleaning jobs that are all given to men.

On overtime in our dept. there are very few women who work. Say a girl is on a line all week in bulk and then when Saturday comes they go into pallets and that means all men. So after the women worked on the line all week she is out of luck for overtime.

We also have women with 16 years laid off and men with a month or two seniority working on day work.

There are many other jobs that could be discussed for women. I feel there should be some way the women in our plant could have a little better deal.

I have 28 years in this plant but if things keep going the way they are I could be the next one out of a job.

Vivienne Haag

Evaluation of Case Docket No. E-3696 Nov. 17, 1970
Henry Saunders, Field Representative
Charles H. Gratman, Compliance Specialist

It is my opinion that the investigational process, which has been conducted in great detail, has been presented in such a manner that reasonable cause can be immediately determined by reviewing the record.

The complainants allegations refers to the following areas:

1) refusal to grant overtime
2) refusal to assign to palletizer
3) generally treated the complainant and other women employees differently
4) and that this was done because of her sex

The complainant supported the above by presenting documents which indicated sex discrimination in the areas of:

1) job assignments
2) job training
3) lay-off's and recall policy
4) denial of overtime to females
5) higher status salary for men
6) denial of promotional opportunities to women
7) recruitment policy which denies women job opportunities
8) and the respondent's policy of causing women to lose their seniority by prolonged layoffs.

The respondent's records which were reviewed and in most cases secured tend to substantiate these claims. The pattern of sex discrimination becomes apparent only after each form (attachment) is reviewed.

It is my contention that because of the importance of this case and the possibility of Commission action in the form of a Public Hearing that every effort should be made on the part of the Field Representative to evaluate the case in such a manner that the facts can be easily re-

viewed and understood. Therefore, I suggest that in eac
area of the complainant's allegation and concern the F
prepare a separate and detailed comparative chart or doc
ument that will substantiate or refute the allegation.

The nature of this comparison should not be limite
to a narrow evaluation of the allegation but should en
compass the overall policy of the respondent as it relate
to its female employees. This would mean going beyon
the allegation when patterns suggest that discriminator
practices exist. A finding of Reasonable Cause can onl
be made after all the facts are secured, reviewed, eva
uated and interpreted by the Field Representative. Th
presentation should be as clear as possible and not mak
it necessary to review the record to piece together th
facts.

November 17. 1970

Dear Mr. Saunders:

I am dropping the charge against the union. "Can Workers Union" Local 266. Also the company Crown Cork and Seal. I want to thank you for all the trouble you went thru. You are a good honest man. If more were like you this world would be a better place to live.

Thanking you again.

I remain

/s/ Mary Martin

December 22.

PENNSYLVANIA HUMAN RELATIONS COMMISS

Compliance Division

CASE CHRONOLOGY

Docket No. E-3696

4-22-70	CS assigned Case to FR
4-24-70	CS handed initial statement to FR
Later	FR reviewed initial statement
4-25-70	FR telephoned complainant
4-27-70	FR checked Corporation Information
Later	FR telephoned complainant
Later	FR met complainant
Later	FR visited respondent company
Later	FR met Industrial Relations Manager
Later	FR reviewed records and received copies
4-28-70	FR conferred with CS
4-29-70	FR visited complainant
Later	FR visited respondent
Later	FR toured plant
5-6-70	FR received correspondence from compla
Later	FR telephoned ADC Fichel
5-15-70	FR conferred with CS
Later	CS conferred with FR
5-18-70	FR telephoned complainant
5-26-70	Complainant telephoned RO
5-29-70	FR conferred with complainant
6-1-70	FR telephoned complainant
6-5-70	FR conferred with complainant
6-7-70	FR telephoned company employees
6-8-70	FR conferred with CS—specific charge sh amended

Later	FR telephoned a company employee
Later	FR telephoned Mr. Walter
Later	Plant Manager telephoned CS and FR
Later	FR telephoned company employees
6-12-70	FR visited respondent company and conferred with Plant Manager and Industrial Relations Manager
Later	FR visited the complainant—received letter from Mrs. Hall
7-1-70	FR reviewed case with CS
Later	FR received correspondence (attachment #27)
7-2-70	FR telephoned Mr. Walter
7-10-70	FR telephoned Mr. Walter
7-16-70	FR's visited respondent company—check Personnel Files
Later	Union President conferred with FR's
7-17-70	FR visited complainant
7-21-70	FR conferred with CS
Later	FR telephoned complainant
7-22-70	FR conferred with CS
Later	Complainant in RO-original complaint amended
Later	FR visited respondent company
7-24-70	FR phoned complainant
7-25-70	FR visited complainant
7-27-70	FR received letter from respondent
7-28-70	Reasonable Cause established
Later	Case progress submitted to CS
Later	Complainant phoned FR
Later	FR phoned witness — no contact
7-29-70	FR reviewed case
7-30-70	CS conferred with FR
7-31-70	Case progress submitted to CS
Later	FR commented on the case at staff meeting
8-7-70	CS Handed memo to FR
8-14-70	Complainant phoned FR

Later	CS requested RS to review case
8-21-70	FR received note from CS
Later	CS requested RS to review case
8-26-70	FR received memo from CS
Later	FR reviewed case
8-27-70	RS. CS. FR reviewed case
8-31-70	FR reviewed case
9-3-70	CS Handed memo to FR
Later	FR reviewed memo
9-8-70	FR reviewed case
9-9-70	FR answered memo of 8-7-70
9-16-70	Case progress submitted to CS
9-17-70	CS conferred with FR
9-25-70	CS conferred with FR
9-28-70	Case progress submitted to CS
Later	Case conference with RS. CS. Cor Heide. Neil Thomas at request of RS
9-30-70	FR received phone call from ACLU
Later	FR phoned complainant
Later	FR received memo from CS
10-2-70	FR reviewed case
Later	FR determined reasonable cause que
10-14-70	Complainant phoned FR
10-15-70	Complainant's letter of withdrawal RO
Later	Case progress and closing submitted
12-1-70	Case closing submitted CS

December 22, 1970

PENNSYLVANIA HUMAN RELATIONS COMMISSION

Compliance Division

CASE CHRONOLOGY

Docket No. E-3697

4-22-70	CS assigned case to FR
4-24-70	CS handed initial statement to FR
Later	FR reviewed initial statement
4-25-70	FR telephoned complainant
4-27-70	FR checked Corporation Information
Later	FR telephoned complainant
Later	FR met complainant
4-28-70	FR conferred with CS
4-29-70	FR visited complainant
Later	FR visited respondent union
Later	FR met union president
5-1-70	FR telephoned respondent union
5-4-70	FR visited respondent & interviewed witnesses
Later	FR telephoned complainant
5-6-70	FR received correspondence from complainant
5-12-70	Complainant telephoned FR
5-14-70	FR visited complainant
5-15-70	FR conferred with CS
Later	FR telephoned respondent union
Later	CS conferred with FR
Later	FR telephoned complainant
Later	FR checked with telephone operator
Later	FR telephoned Moses Librizzi
Later	FR telephoned Moses Librizzi — left message
Later	FR telephoned John Librizzi
5-18-70	FR telephoned Crown Cork and Seal Co.

Later	FR telephoned Pat Coia
Later	FR telephoned complainant
5-26-70	Complainant telephoned RO
5-29-70	FR telephoned complainant
6-1-70	FR telephoned complainant
Later	CS conferred with FR
6-5-70	FR conferred with complainant
6-8-70	Union President telephoned FR
7-13-70	FR telephoned respondent union
7-16-70	Mr. Tedeschi conferred with FR's
7-17-70	FR visited complainant
Later	FR submitted attachments to Hbg
7-27-70	FR phoned respondent union — l
7-28-70	Mr. Tedeschi phoned FR
7-29-70	FR conferred with CS and was ins centrate on E-3696
10-7-70	FR reviewed case
Later	Case closing submitted CS
10-15-70	Letter of withdrawal sent FR

Docket No. E-3696

Initial Case Progress

Complainant
Pennsylvania Human Relations Commission
100 North Cameron Street
Harrisburg, Pa.

Respondent
Crown Cork and Seal Company Inc.
9300 Ashton Road
Philadelphia, Pa.

and

Sheet Metal Workers International Association
Can Workers Union Local No. 266
6445 Frankford Avenue
Philadelphia, Pa.

As a result of the investigational process in the doc
eted cases E-3696 and E-3697 sufficient informati
was secured to credit the allegation of the complaina
However, she has withdrawn her complaint alleging s
discrimination.

The following is a partial list of the general alle
tions made by Mary Martin.

(1) *Sex Discrimination*

a) Company is becoming automated and the fem
employees are being denied the opportunity
operate them. (Machinery)

b) The female employees are also being replaced
male employees (new hires?) on the older m
chines which are harder to operate.

c) Their refusal stems from the expression "it
man's job"?

d) Because they have not had the opportunity
learn the new jobs they are laid off. When w
is available men are hired rather than recall
the women.

e) Men work overtime whereas wo
f) Men receive a higher rate of pay
same work.
g) There are no female supervisor
sition is that of "Lead Girl".
h) Separate seniority lists — one
female.
i) Union officials complete pre-en
cations for males who are unable
of language barrier.
j) Only men are allowed to operate
department 23 and 28.
k) Women are laid off for prolonge
inate their seniority rights and
l) Racial segregation of departmen

The following is a list of specific co
her fellow employees:

Specific Complaints

1. Mary Martin — lead man get
hours for doin
— even the sv
than I do.
2. Eleanor Meredith — A genera
women a
because
3. Vargenca Haag — Is fearful t
her job a
cause of se
4. Florence Brumaster — Men w
work d
are re
nights
5. Dorothy Gribbins — Denied j
6. Mary Martin — No longer allo
time as are s
women who
file a complai

Also on 4-13-70 she was
off overtime and it was giv
a man — also affected
Eleanor Meredith and
Haag.

7. Emily Feigel — She lost her job to a man
has less seniority (hearsa

8. Doris Yocum — 16 years of seniority wa
off (6-6-70) she also says
with less seniority a
tained.

The respondent has made the following re
some of the allegations.

Respondents Reply of Explanation

1. Overtime — Department 40

a)	(M)	(M)	(M)	(M)	(M)	(M)	(M)	(M)	(M)	(M
4-11-40	6287	7607	7558	6628	7261	5086	7547	6672	2965	
4-12-70	6287	7607			7261	5986			2965	
4-25-70	6287	7607	7558			5986	7547		2965	736

Those Transferred to other Department

Name	*Sex*	*Department*	
Martin	(F)	to dept. 22	
Hartman	(F)	" " "	
Rassion	(F)	" " "	Anglina Rassino se 1-4-51
Loniti	(F)	" " "	Josephine Moniti se 4-16-51
Fyfer	(F)		
Johnson	(M)		

The above indicates that *all* overtime gran
4-11-70 and 4-12-70 were to male employees —

employees were transferred to department 12. The larger employee number also reflects that seniority is being ignored.

Respondent says person working on job gets first preference for overtime — than seniority (if women can't get the job how can they get overtime?)

2. *Lay Off — Recall Policy*

Union contract provides that plant seniority shall govern in all cases of layoffs and recalls provided the individual has the ability to do the work — last hired first laid off — last laid off first recalled.

Union is notified 2 days prior to lay off.

From the attached material it it apparent that the respondent keeps two (2) separate lists and is not following procedure as the female employees have *greater* seniority to the male employees. Greater is an understatement.

The following lists reflect that two separate lists are kept for male and female employees and seniority rights are violated.

Recall 12-29-69

(1) 15 W — average seniority 14 years
5 M — average seniority 2 months
6-29-70

(2) 5 W — average seniority 18 years
9 M — average seniority 1½ months
3-2-70

(3) 0 W
14 M — average seniority 2½ months
3-2-70

(4) 0 W
4 M — average seniority 2 months

Layoff

(1) 16 W — average seniority 15 years
0 M

6-12-70

(2) 0 W
7 M — average seniority 1 month

6-12-70

(3) 19 W — average seniority 17 years
30 M — average seniority 1 month

6-19-70

(4) 8 W — average seniority 17 years
0 M

2-27-70

(5) 21 W — average seniority 17 years
0 M

4-10-70

(6) 5 W — average seniority 17 years
15 M — average seniority 2 months

2-6-70

3. *Salary Scale*

Respondent claims no difference in salary. All employees start at $2.95 per hour. However the average salary of the female employees is lower than the male employees even though they have greater seniority — A different wage scale and payroll code number may also indicate a difference in salary and potential promotion possibilities.

4. *Denial of Job Opportunities and Training*

Respondent states "certain jobs men must do".

Based on this information I believe that a PHRC is justified and that all the female employees are victims of discrimination either through their loss of employment and/or conditions of employment.

December 23, 1970

Mr. Adam P. Walter
Industrial Relations Manager
Crown Cork and Seal Company Inc.
9300 Ashton Road
Philadelphia, PA 19136

Re: Docket No. E-4027
Pennsylvania Human Relations Commission

v.

Crown Cork and Seal Company, Inc., Sheet Metal Workers International Association, AFL-CIO Can Workers' Union Local 266

Dear Mr. Walter:

The Pennsylvania Human Relations Commission has initiated a complaint alleging sex discrimination. The respondents are as indicated above.

In order to resolve this complaint it will be necessary to meet with you in order to present you with complaint forms and to make you aware of the information needed to resolve this allegation.

If you would kindly contact me within the next seven (7) days an appointment can be arranged.

Sincerely yours,

Charles Gratman
Compliance Specialist

CG/kk

Certified Mail
Return Receipt Requested

December 23. 1970

Mr. Herman Tedeschi
President & Business Agent
Sheet Metal Workers International Association
AFL-CIO Can Workers Union Local 266
6445 Frankford Avenue
Philadelphia, PA 19135

Re: Docket No. E-4027
Pennsylvania Human Relations Commission

v.

Crown Cork and Seal Company, Inc., Sheet Metal Workers International Association, AFL-CIO, Can Workers' Union Local 266

Dear Mr. Tedeschi:

The Pennsylvania Human Relations Commission has initiated a complaint alleging sex discrimination. The respondents are as indicated above.

In order to resolve this complaint it will be necessary to meet with you in order to present you with complaint form and to make you aware of the information needed to resolve this allegation.

If you would kindly contact me within the next seven (7) days an appointment can be arranged.

Sincerely yours,

Charles Gratman
Compliance Specialist

CG/kk

Certified Mail
Return Receipt Requested

PENNSYLVANIA HUMAN RELATIONS COMMISSIO

CASE CLOSING RECOMMENDATION

January 29, 1971

Docket No. E-3696
Complaint Received: 4-15-70
Date Docketed: 4-20-70
Initial Contact with Complainant: 4-25-70

Complainant
(Mrs.) Mary Martin
Philadelphia, Pennsylvania

Respondent
Crown Cork & Seal
Company, Inc.
Philadelphia, Pennsylva

Charge: Sex

The complainant, a female, alleges the respond refuses to give her overtime work while giving it to m employees, and refuses to assign her to the Palleti Machine, despite the fact that she has seniority o male employees. The complainant further alleges t the respondent generally treats the complainant a other female employees differently than male employe because of sex.

Summary of Facts:

Before the investigation of this case was complet the complainant requested withdrawal of this compla The withdrawal was confirmed in a letter received fr the complainant on 10-15-70. No reason was given the withdrawal.

Note: Because the information secured dur this investigation indicated a pattern discrimination in all phases of respondent's employment practices PHRC complaint, Docket No. E-40 was initiated on 12-22-70 against this

spondent and the Sheet Metal Workers' International Association. AFL-CIO. Can Workers' Union. Local 266.

Staff Findings:

Staff found the complaint was withdrawn by the complainant.

Recommendation:

It is recommended that the Commission dismiss this case on the grounds that the complaint was withdrawn by the complainant.

Henry S. Saunders Howard L. Tucker. Jr.

Docket No. E-3696
Page 2

Commission Action: To close as recommended. 1/29/71.

/s/ Homer C. Floyd
Homer C. Floyd
Executive Director

PENNSYLVANIA HUMAN RELATIONS COMMISSI

CASE CLOSING RECOMMENDATION

January 29, 197

Docket No. E-3697
Complaint Received: 4-15-70
Date Docketed: 4-20-70
Initial Contact with Complainant: 4-27-70

Complainant
(Mrs.) Mary Martin
Philadelphia,
Pennsylvania

Respondent
Sheet Metal Workers'
International Association
AFL-CIO Can Workers'
Union
Local 266
Philadelphia, Pennsylvan

Charge: Sex

The complainant, a female, alleges the respon refuses to represent her in her efforts to secure over work and assignment to the Palletizer Machine at Cr Cork & Seal Company, Inc. The complainant furthe leges that the respondent refuses to represent the plainant and other female employees in their effor secure the same treatment by the Company as tha corded male employees, because of sex.

Summary of Facts:

Before the investigation of this case was compl the complainant requested withdrawal of this comp The withdrawal was confirmed in a letter received the complainant on 10-15-70. No reason was give the withdrawal.

Note: Because the information secured d this investigation indicated a patte discrimination in all phases of Company's employment practices. intervention by the Union in beh

the female employees, a PHRC complaint, Docket No. E-4027, was initiated on 12-22-70 against this respondent and Crown Cork and Seal Company, Inc.

Staff Findings:

Staff found the complaint was withdrawn by the complainant.

Recommendation:

It is recommended that the Commission dismiss this case on the grounds that the complaint was withdrawn by the complainant.

Commission Action: To close as recommended. 1-29-71.

/s/ Homer C. Floyd
Homer C. Floyd
Executive Director

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSI

Elizabeth C. McNasby :
(Complainant)

v. :

DOCKET NO. E-4

Crown Cork and Seal Company
Sheet Metal Workers :
International Association,
AFL-CIO, Local 266
(Respondent) :

COMPLAINT

(x) Employment ( ) Housing ( ) Public Accommoda
( ) Education . . . Because of the ( ) Race, ( ) C
( ) Religious Creed ( ) National Origin ( ) Ance
( ) Age or (x) Sex, of the complainant.

1. The Complainant herein is Elizabeth McNasby, 43 Haverford Road, Runnemede, New Je

2. The Respondent herein are Crown Cork and Company, 9300 Ashton Road, Philadelphia, Pennsylvania and Sheetmetal Workers International Associa AFL-CIO, Local 266, 6445 Frankford Avenue, Phila phia, Pa.

3. The Complainant alleges that the respond consorted in the lay-off of the complainant becau her sex, FEMALE, and have prevented her, as well other females, from enjoying equal job opportuniti Crown Cork and Seal Company.

4. The Complainant alleges that the alleged unlawful discriminatory practice:

(x) took place on or about May 14. 1971

( ) is of a continuing nature which has persisted up to and including the present time.

5. No other action based on these allegations has been instituted by the Complainant in any Court or before any other Commission within the Commonwealth of Pennsylvania except as follows:

(x) None

( )_____

6. Such action complained of is a violation of:

(x) Section 5(a)(e) of the Pennsylvania Human Relations Act. Act of October 27. 1955. P.L. 744. as amended by the Act of February 28. 1961. P.L. 47 and as further amended by the act of July 9. 1969. P.L. 133.

( ) Section _____ of the Pennsylvania Fair Educational Opportunities Act (Act of July 17. 1961. P.L. 776).

/s/ Elizabeth C. McNasby
(Signature of Complainant)
Date: 6/11/71

Sworn to and subscribed before me this 11th day of June. 1971

/s/_____

Notary Public
My Commission Expires:

COMMONWEALTH OF PENNSYLVANIA

PENNSYLVANIA HUMAN RELATIONS COMM

Pennsylvania Human Relations Commission *(Complainant)*	:	
	:	**COMPLA**
v.	:	
		DOCKET NO.
Crown Cork and Seal Company Sheet Metal Workers' International Association, AFL-CIO, Can Workers' Union, Local 266 *(Respondents)*	:	

COMPLAINT

1. The complainant herein is Pennsylvania Relations Commission, 100 North Cameron Str risburg, Pennsylvania 17101.

2. The respondents herein are Crown Cor Company, Inc., 9300 Ashton Road, Philadelphi sylvania 19114; and Sheet Metal Workers' Inte Association, AFL-CIO, Can Workers' Union, L 6445 Frankford Avenue, Philadelphia, Penn 19135.

3. On or about to wit, December 22, 1970 plainant alleges that the respondent Company in unlawful employment practices which are natory with respect to female employes, becaus sex, in hiring, assignment, seniority, transfe overtime, promotion, denial of training, and la further alleged that the respondent Union co and aids and abets the discriminatory practic respondent Company.

4. Such action by the respondent constitutes an u
lawful discriminatory practice and is in violation of Se
tion 5, Sub-Section(s) (a) and (e) of the Act of Octob
27, 1955, P.L. 744, as amended by the Act of Februa
28, 1961, P.L. 47, and as further amended by the Act
July 9, 1969, P.L. _____ (Act #56), known as the Pen
sylvania Human Relations Act.

5. No other action based on the allegations set for
in this Complaint has been instituted by the complaina
in any court or before any other commission within t
Commonwealth.

6. The unlawful discriminatory practice referred
in this Complaint is of a continuing nature which h
persisted up to and including the present time.

Sworn to and subscribed
before me this 22nd day
of December, 1970

Notary Public My Commission Expires:	Homer C. Floyd Executive Director

Office-Supreme Court, U.S.
FILED
MAY 8 1985
ALEXANDER L. STEVAS
CLERK

No. 84-1609

(3)

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1984

JOAN L. MURPHY, et al.,
Appellants

v.

COMMONWEALTH OF PENNSYLVANIA
HUMAN RELATIONS COMMISSION, et al.,
Appellees

On Appeal from the
Supreme Court of Pennsylvania

MOTION TO DISMISS OR AFFIRM OF APPELLEE CROWN CORK AND SEAL COMPANY, INC.

Jerome A. Hoffman*
Jean Wegman Burns
DECHERT PRICE & RHOADS
3400 Centre Square West
1500 Market Street
Philadelphia, Pennsylvania 19102
(215) 972-3578

Michael J. Stack
Stephen P. Gallagher
STACK AND GALLAGHER
1600 Locust Street
Philadelphia, Pennsylvania 19102

Counsel for Appellee
Crown Cork and Seal
Company, Inc.

* *Counsel of Record*

May 8, 1985

PACKARD PRESS / LEGAL DIVISION, 10TH AND SPRING GARDEN STS., PHILA., PA 19123 (215) 236-2000

QUESTION PRESENTED

Whether a complainant's due process or equal protection rights are violated by a State's requirement that a complaint filed under the State's Human Relations Act be filed within 90 days of the alleged discriminatory act.

STATEMENT PURSUANT TO RULE 28.1

Appellee, Crown Cork and Seal Company, Inc., has no parent companies, partially-owned subsidiaries or affiliates.

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B. The Proceedings Below 4

ARGUMENT

I. THE DECISION BELOW IS ENTIRELY CONSISTENT WITH THIS COURT'S DECISIONS IN *LOGAN* AND *BALDWIN COUNTY*. 8

II. THE PROVISIONS OF THE ACT ARE NOT ARBITRARY OR IRRATIONAL 11

III. THIS CASE IS FACT SPECIFIC, SUI GENERIS AND DOES NOT PRESENT A SUBSTANTIAL FEDERAL QUESTION 11

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TABLE OF AUTHORITIES

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General Telephone Company of the Northwest, Inc v. EEOC, 446 U.S. 318 (1980) .....

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Schweiker v. Wilson, 450 U.S. 221 (1981) .....

Fye v. Central Transportation, Inc., 487 Pa. 13 409 A.2d 2 (1979) .....

Murphy v. Commonwealth of Pennsylvania Huma Relations Commission, _____ Pa. _____ 486 A.2d 388 (1985) .....

Pennsylvania Human Relations Commission United States Steel Corp., 458 Pa. 559, 325 A.2 910 (1974) .....

Statutory Provisions:

28 U.S.C. §1257(2) .....

43 P.S. §951-962 .....

43 P.S. §959(a) .....

43 P.S. §959(g) .....

43 P.S. §962(b) .....

43 P.S. §962(c) .....

No. 84-1609

IN THE

SUPREME COURT OF THE UNITED STA

October Term, 1984

JOAN L. MURPHY, et al.,

Ap

v.

COMMONWEALTH OF PENNSYLVANIA
HUMAN RELATIONS COMMISSION, et al.

A

On Appeal from the
Supreme Court of Pennsylvania

MOTION TO DISMISS OR AFFIRM OF APPELLEE CROWN CORK AND SEAL COMPAN

Appellee, Crown Cork and Seal Compa ("Crown Cork"), moves the Court to affirm the ju of the Pennsylvania Supreme Court on the gro the questions on which that court's decision have been decided by this Court and require n briefing or argument.

This Court has repeatedly noted that a Sta Federal Government may establish reasonabl dural requirements with respect to the use of a tory processes. In *Logan v. Zimmerman Brush* U.S. 422 (1982), this Court held that a state terminate a complainant's cause of action in adjudicatory process, solely because of an erro part of a State official, over whom the complai

no control. In so holding, however, this Court specific noted that a State may erect "reasonable procedural quirements" such as a statute of limitations. Similarly *Baldwin County Welcome Center v. Brown*, _____ U.S. _____, 104 S.Ct. 1723 (1984), this Court h that a complainant who wants to begin an action i United States District Court must comply with the F eral Rules of Civil Procedure regarding the nature of complaint and failure to do so is grounds for termina the action.

Here, the court below simply applied this settled to the factual case before it. The appellants here, un the complainant in *Logan*, did not file timely compla in compliance with the Pennsylvania Human Relat Act. The complainants' causes of action, therefore, w not terminated because of any error of a State off over whom they had no control, but by their own d sions not to initiate the process that the State had es lished for them.

This appeal does not present a substantial fed question that this Court has not already answered the contrary, this case is fact specific and sui generis. these reasons, the appeal should be dismissed.

STATEMENT OF THE CASE

A. The Statute at Issue

The statute at issue is the Pennsylvania Hu
lations Act, 43 P.S. §§951-962 ("Act"), which de
claims of unlawful discrimination. The Act p
procedurally, a number of options for bringing a
discrimination. An individual complainant may f
the Pennsylvania Human Relations Commissi
Commission"), his own complaint, charging t
discriminatory practices. 43 P.S. §959(a). Or, t
mission may, "on its own initiative," file a com
"Commissioner's complaint"). 43 P.S. §959(a).
tion, the Act specifically provides that the com
has the option of not using the Act's procedures
stead, pursuing other available remedies (*e.g.*,
Court). 43 P.S. §962(b). Finally, if the complain
elect to file a complaint under the Act, and, if w
year, the Commission dismisses the complain
failed to enter into a conciliation agreement, t
plainant may then pursue any other available r
43 P.S. §962(c).[1]

Where a complaint is filed under the Act
requires that the complaint, whether filed by an
ual or the Commission, "shall set forth the partic
the alleged unlawful discriminatory practice.
§959(a). To be effective, a complaint must be file
90 days after the alleged act of discrimination
§959(g).

After a complaint is filed, the Commission
investigation and, upon a finding that probable

1. If the complainant elects not to use the Act's proc
to seek relief elsewhere (*e.g.*, in State Court), the compl
not later invoke the Act's procedures. 43 P.S. §962(b). C
if the complainant invokes the procedures of the Act, the
ant may not, thereafter, bring an action in State Cou
§962(b). *Fye v. Central Transportation, Inc.*, 487 Pa. 13
2, 4-5 (1979)

ists, the Commission tries by conciliation or otherwise, to eliminate any unlawful discriminatory acts, and if necessary, holds a hearing to determine if there is, in fact, unlawful discrimination. 43 P.S. §959.

If, after the hearing, the Commission makes a finding of discrimination, the Commission has discretion to fashion the remedies that it thinks appropriate for the particular case. 43 P.S. §§959 and 960.

B. The Proceedings Below

The appellants here appeal the decision of the Pennsylvania Supreme *Court, Murphy v. Commonwealth of Pennsylvania Human Relations Commission,* _____ *Pa.* _____, *486 A.2d 388 (1985) (A-87).* That decision affirmed the decision of the Pennsylvania Commonwealth Court, which, in turn, affirmed a decision of the Pennsylvania Human Relations Commission regarding a Commissioner's complaint filed in 1975 against Crown Cork and Local 266 of the Sheet Metal Production Workers (the "Union").[2] To understand the setting of the proceedings, however, requires an explanation of the facts going back to 1970.

In February of 1970, eleven female employees of Crown Cork went to the Commission to complain about discrimination they felt existed, with the acquiescence of the Union, at the company. Although the representative of the Commission explained to the women the method for filing a complaint with the Commission, not one of the women chose to file and sign a complaint. (A-118.)[3]

In December 1970, the Commission, on its own motion, filed a Commissioner's complaint against Crown

2. The Pennsylvania Commonwealth Court decision is reported at 77 Pa. Cmwlth. Ct 291 (1983). The decision of the Commission is unreported but is reproduced in appellant's Appendix at A-1 and A-57.

3. In April 1970, one woman Mary Martin did file an individual complaint, but withdrew it in October 1970. That complaint thereafter had no legal significance.

Cork and the Union. This complaint consisted of just tw pages and made only general allegations of "unlawf employment practices" with no mention of individu complainants.

An individual complaint was also filed (in Ju 1970) by Elizabeth McNasby. Along with the individu allegations, the McNasby complaint also had a sing sentence reference to treatment of "other females" Crown Cork.

In October 1974, while the Commissioner's co plaint and the McNasby complaint were pending, t Pennsylvania Supreme Court issued its opinion in *Pen sylvania Human Relations Commission v. United Sta Steel Corp.*, 458 Pa. 559, 325 A.2d 910 (1974) ("*U Steel*"). In *U.S. Steel*, the Pennsylvania Supreme Co held that a Commissioner's complaint which only sta general allegations of discriminatory acts failed to sati the "particularity" requirement of the Act and w therefore, invalid.

In response to the *U.S. Steel* decision (where complaint struck down was almost identical to the 19 Commissioner's complaint here), the Commission, October 1975, filed a new, 34-page complaint (styled "amended complaint") against Crown Cork and the U ion. The new Commissioner's complaint contained tailed class-wide charges and charges of 13 named dividuals. Prior to the hearing, Crown Cork moved to miss the 1975 complaint on the ground that, because 1970 Commissioner's complaint was invalid due to l of particularity, there could be no amendment to it.

After 37 days of hearing and 6,000 pages of tr script, the Commission issued its decision in Septem 1981 (and a supplemental opinion on May 19, 198 The Commission concluded that: the 1 Commissioner's complaint was a nullity because of l of particularity, and, therefore, did not toll the statut limitations; the 1971 McNasby complaint was su

ciently particular as an individual complaint, but not a class complaint; and the 1975 Commissioner's complaint was effectively an original complaint.

The Commission, pursuant to its discretionary power to fashion relief, ordered extensive relief, including monetary relief for McNasby and females employed at the Company from July 31, 1975, to December 31, 1975. However, because the December 1975 Commissioner's complaint was the first tolling of the Act's 90-day statute of limitations, only one of the individuals named in the 1975 complaint was entitled to relief. (A-1 and A-57.) Nine of the remaining individual complainants, along with Ms. McNasby, appealed to the Pennsylvania Commonwealth Court and then the Pennsylvania Supreme Court and are appellants here.

In the Pennsylvania Supreme Court, appellants raised a whole panoply of reasons why the Commonwealth Court's decision (and the Commission's decision) should be reversed. They argued, among other things, that the 1970 Commissioner's complaint should have tolled the statute of limitations; that the 1975 complaint should be deemed to date back to 1970; that Crown Cork and the Union waived the statute of limitations argument; that a "continuing violation" should have been found. The Pennsylvania Supreme Court reviewed each alleged error and affirmed.

In particular, the Pennsylvania Supreme Court considered the question raised here, *i.e.*, whether this Court's decision in *Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982), suggested that the application of the Pennsylvania Human Relations Act to the individual complainants here deprived them of their federal constitutional rights. The Pennsylvania Supreme Court held that while it certainly had no quarrel with the wisdom of *Logan*, that decision was inapplicable for the simple reason that, unlike *Logan*, the individual complainants here (except for McNasby) did not preserve their rights by filing individual complaints. (A-95.)

The Pennsylvania Supreme Court observed that, in *Logan*, the majority had specifically stated, 455 U.S. at 437, that:

> "The State may erect reasonable procedural requirements for triggering the right to an adjudication, [such as] statutes of limitation . . . . And the State certainly accords *due* process when it terminates a claim for failure to comply with a reasonable procedural or evidentiary rule."
> (Emphasis in original.)

The Pennsylvania Supreme Court also considered and rejected the appellants' claim that they had an "interest" in the Commissioner's complaint. In rejecting this argument, the Court noted that, under Pennsylvania law, a Commissioner's complaint, unlike an individual complaint, is for "the public interest" and is filed on behalf of the Commonwealth. A particular individual may, by coincidence, benefit from a Commissioner's complaint, but he does not have an "interest" in it. (A-96.)

The Pennsylvania Supreme Court similarly considered and rejected the other contentions raised here by appellants. The court below noted that proceedings before the Commission are strictly governed by statute and the Act specifies the type of complaint necessary to initiate an action and to toll the statute of limitations. The complainants, the court below observed, "do not seriously contend" that the 1970 Commissioner's complaint met the Act's particularity requirement. The 1970 Commissioner's complaint was, therefore, a nullity and could not invoke the Commission's jurisdiction, toll the statute of limitations, or be "amended." (A-93 and 94).

The remaining issues raised by appellants, as the court below recognized, questioned matters that fell within the Commission's discretion. The court below reviewed each issue and found no abuse of discretion. (A-94 - A-97.)

ARGUMENT

I. THE DECISION BELOW IS ENTIRELY CONSISTENT WITH THIS COURT'S DECISIONS IN *LOGAN* AND *BALDWIN COUNTY*

In *Logan*, this Court held that a State could not, consistent with due process, terminate a complainant's cause of action under the State's Employment Practices Act solely because a state official, for reasons beyond the complainant's control, failed to comply with a statutorily mandated procedure. There, the complainant (Logan) complied with the State Act's requirements, but a state official failed to schedule a hearing within the 120 days permitted by the Act. This Court held that Logan had a property right to use the State Act's adjudicatory procedures, and the State violated Logan's due process rights by terminating his cause of action under the Act because of an error on the State's part.

In *Logan*, the majority opinion specifically noted, however, that:

> "This is not to suggest, of course, that the State must consider the merits of the claim when the *claimant* fails to comply with a reasonable procedural requirement, or fails to file a timely charge."

455 U.S. at 434 n. 7. (Emphasis in original.)

This Court went on to state:

> "The State may erect reasonable procedural requirements for triggering the right to an adjudication, be they statutes of limitations . . . or, in an appropriate case, filing fees . . . . And the State certainly accords *due* process when it terminates a claim for failure to comply with a reasonable procedural or evidentiary rule."

455 U.S. at 437. (Emphasis in original.)

See Baldwin County Welcome Center v. Brown, _____ U.S. _____, 104 S.Ct. at 1726. (Failure to file adequate complaint in District Court was proper ground for terminating action. "Procedural requirements established by Congress for gaining access to the federal courts are not to be disregarded by courts out of a vague sympathy for particular litigants.")

The situation here fits exactly the Court's observation in *Logan* regarding reasonable procedural requirements. The appellants decided, for their own reasons, not to file timely complaints under the Act, even though they were specifically told of their right to do so. They were not denied due process. They simply chose not to invoke, within the statute of limitations period, the process that Pennsylvania had set up for claims of discrimination.

Appellants' claim of an equal protection violation fails for the same reason. The only distinction drawn by the Act, in this regard, is between those complainants who file timely complaints and those who do not. Such a distinction, which is based on the *complainant's* own action or inaction, is obviously one that rationally advances a reasonable and identifiable governmental objective. *Schweiker v. Wilson*, 450 U.S. 221, 235 (1981).

In an attempt to obscure the simple fact that they failed to file complaints (and to try to force this case within the *Logan* mold), appellants argue that they have an interest in the Commissioner's complaint. They then say the invalidity of the 1970's Commissioner's complaint, due to lack of particularity, violated their due process rights.

Under the Act, however, a Commissioner's complaint, while it may benefit particular persons, is filed on behalf of the Commonwealth in order to vindicate the public interest. *Murphy, supra*, 486 Pa. at 393 (A-96). A complainant has no right to force the Commission to file a Commissioner's complaint — just as a complainant

with the EEOC has no right to force the EEOC to sue. *See General Telephone Co. v. EEOC*, 446 U.S. 318, 326 (1980) (EEOC action "albeit at the behest of and for the benefit of specific individuals," is not a representative action and does not supplant or replace the private action.)

Here, the Act gives the complainant a whole series of options: he can file his own complaint under the Act; he can pursue remedies outside the Act; he can ask the Commission to investigate; he can even file a complaint under the Act, and, if it is dismissed or no conciliation agreement is entered, he can then pursue other remedies. Under these circumstances, to the extent that appellants had any "interest" in the Commissioner's complaint, it certainly does not rise to the level of a due process interest.

Furthermore, even assuming the appellant's could somehow piggyback on the Commissioner's complaint, the simple fact is — as appellants recognize — that the 1970 Commissioner's complaint lacked the particularity required by the Act. In 1974 the Pennsylvania Supreme Court specifically held, in *U.S. Steel*, that the Act's requirement of particularity for complaints meant what it said. That decision in *U.S. Steel* is identical (but for the different forum) to this Court's decision in *Baldwin County*.

Grasping at straws, appellants suggest they were misled in February 1970 into believing that only one woman had to sign a complaint and that that somehow puts this case into the *Logan* mold. Again, appellants try to blush over the irrefutable facts: (1) in February 1970, the women were told of their right to sign and file complaints (A-118); and (2) none did.[4] The one-sentence ref-

---

4. Two months later, in April 1970, Mary Martin filed a complaint, but that complaint was withdrawn and thereafter had no legal significance. The 1971 McNasby complaint, like the 1970 Commissioner's complaint, had only a general, half-sentence reference to other women and, lacking particularity, was a nullity, apart

erence on which appellants rely (which is ambiguous, directed at the Union, and may well have been made with respect to a Commission investigation) cannot overcome these simple facts.

II. THE PROVISIONS OF THE ACT ARE NOT ARBITRARY OR IRRATIONAL

As a last ditch effort, appellants claim that they were arbitrarily and irrationally denied access to the proper forum because of: (i) the particularity requirement of the Act; (ii) the failure to treat the 1975 Commissioner's complaint as an amendment to the 1970 Commissioner's complaint; (iii) the failure to hold that Crown Cork waived its right to attack the particularity of the 1970 complaint; and (iv) failure of the Commission to rule otherwise because of alleged lack of prejudice to Crown Cork.

The first of these claims is just a repeat of an earlier argument and, as explained, is squarely answered by *Baldwin County*, where this Court held that a particularity requirement for a complaint is a proper and valid procedural requirement. The other three matters listed above, (ii)-(iv), are all matters within the discretion of the Commission and were considered by the Commission, the Commonwealth Court and the Supreme Court.

III. THIS CASE IS FACT SPECIFIC, SUI GENERIS AND DOES NOT PRESENT A SUBSTANTIAL FEDERAL QUESTION

Although appellants have labeled this a direct appeal under 28 U.S.C. §1257(2), it is not. While the appellants talk about the constitutionality of the Act, they are really arguing that their rights will be violated if the Act — and, in particular, its statute of limitations — is applied to them. The appellants would have no complaints with the

from its allegations regarding Ms. McNasby. Appellants can have no "interest" in either of these individual complaints.

Act if they could be excused from the statute of limitations provision.

Furthermore, even if this case is deemed a direct appeal under §1257(2), it does not present a substantial federal question, but rather, the decision below just affirms settled law. In *Logan*, this Court specifically addressed the issue of State procedural requirements and stated that such requirements were proper and failure to follow them was a proper ground for terminating a claim. Again, in *Baldwin County*, this Court dealt with an analogous situation regarding the federal court rules for a complaint and again held that failure to follow the rules was a proper basis for terminating a claim.

Nor is this a proper case in which to grant a petition for a writ of certiorari. This case is fact specific and sui generis. This case only exists because these appellants failed to protect their own interests by filing complaints, and in 1974 the Pennsylvania Supreme Court, in *U.S. Steel*, held that the particularity requirement in the Act means exactly what it says. This case presents no broad issues of general constitutional application, but rather, is just the result of the timing of the Pennsylvania Supreme Court's decision in *U.S. Steel* and, more important, these appellants' own failure to invoke a process that was there all along.

CONCLUSION

This case does not present any substantial federal questions that this Court has not already answered. To the contrary, the court below applied well-settled law, and in particular this Court's decision in *Logan*, to the particular facts before it.

Unlike Mr. Logan, the appellants here have not been denied due process or equal protection for the simple reason that they chose, for whatever reasons, not to invoke the available State procedure. They were not denied access to any process. They chose not to invoke the process

under the Act (even though they were specifically told of their right to file complaints) or to pursue other available remedies.

Appellants' attempt to piggyback on the 1970 Commissioner's complaint fails because (i) such a complaint is discretionary and for the public good and not intended to supplant individual complaints, and (ii) that complaint was, in any case, a nullity because it lacked particularity, a reasonable procedural requirement. *Baldwin County*.

Finally, the grab-bag of alleged errors that appellants have lumped together in "Question 3" are simply questions of whether the Commission abused its discretion in this particular case. These are case specific and certainly raise no substantial federal question.

Respectfully submitted,

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84-1609

No. 84
1609

In the Supreme Court of the United States

October Term, 1984

JOAN L. MURPHY, LORRAINE R. MASON, EDITH L. McGRODY, MARIE PEKALA, HENRIETTA ELLIOTT, CATHERINE BERES, VIRGINIA KNOWLES, ANN JACYSZYN, PEGGY FELMEY, ELEANOR NEYER, DORIS YOCUM AND ELIZABETH McNASBY, on Behalf of Themselves and All Others Similarly Situated,
Appellants

v.

COMMONWEALTH OF PENNSYLVANIA HUMAN RELATIONS COMMISSION AND CROWN CORK AND SEAL COMPANY, INC., AND SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, AFL-CIO, CAN WORKERS' UNION, LOCAL 266, a/k/a SHEET METAL PRODUCTION WORKERS UNION LOCAL No. 266,
Appellees

APPELLEES' MOTION TO DISMISS OR AFFIRM

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STATEMENT OF QUESTIONS PRESENTED

1. Were the appellants, who did not file individually, and exercise their right to file a complaint, deprived of due process when the commissioners complaint was found to be insufficiently particular?

2. Is the requirement that a complaint be filed in a timely fashion, a legitimate state requirement and not a violation of equal protection?

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STATUTE:

Pennsylvania Human Relations Act, Act of October 27, 1955, P.L. 744, as amended, Pa. Stat. Ann. Tit. 43:

§9 4,

§§951-964 .....2, 3,

STATEMENT OF THE CASE

1. Procedural History

In February of 1970, eleven women who worked a Crown Cork and Seal, Inc. ("Crown" or "The Company") went to the Philadelphia Regional Office of Pennsylvania Human Relations Commission ("Commission" o "PHRC") to complain about sex discrimination at Crow (A 114-119*). They also complained that their union Local 266 of the Sheet Metal Production Workers Union was acquiesing in the discrimination. In April 1970 on of these women, Mary Martin, filed a formal complaint (A 110-111). In October of 1970 she withdrew her complain (A 123). In December of 1970, based in part on the in formation provided by Martin and others, the Commission of its own initiative, and without an actual named com plainant, filed a Commissioners' complaint against th company and the union. This complaint alleged unlawfu patterns or practices of sex discrimination in recruitmen hiring, initial job assignment, promotions, overtime, lay offs and recall from layoffs. This complaint has variousl been referred to throughout the ensuing litigation as th "original" complaint, Docket No. E-4027, the Commissio initiated complaint, the Commissioners' complaint and th PHRC complaint. It will hereinafter be referred to as th Commissioners' Complaint (A 141).

*All references to A are to the Appendix provided by Ap pellants.

Elizabeth McNasby, who also worked at Crown, a complaint on June 11, 1971, at Docket No. E-4249 (inafter "McNasby Complaint") in which she alleged the Respondents "consorted in the layoff of the Comp ant because of her sex, female, and have prevented h well as all other females, from enjoying equal job o tunities at Crown Cork and Seal Company" (A Only McNasby's name was on this complaint, and the reference to other similarly situated females was the c that the Company ". . . [has] . . . prevented . . . all females from enjoying equal job opportunities" (A 1

In addition to providing for individual filing of plaints, the Pennsylvania Human Relations Act ("A Act of October 27, 1955, P.L. 744, *as amended*, Pa. Ann. Tit. 43 §951-964, also provides for the filing "Commissioners" complaint. This is a complaint wit Commission as the named plaintiff. "The Comm upon its own initiative or the Attorney General, ma like manner, make, sign and file such complaint" 4 959 (a).

The only definition of a Commissioners' com came in the opinion of the Pennsylvania Supreme below. The Court noted that a "Commissioners" plaint is filed *on behalf of the Commonwealth*, as op to individual claimants, with the intent of vindicati public interest . . ." (A 96).

On October 16, 1974, the Supreme Court of sylvania handed down a decision in *Pennsylvania H Relations Commission v. U.S. Steel Corp.*, 458 Pa 375 A.2d 910 (1974). This opinion stated that a Co sion complaint which alleged, merely, that an em had, in the past, and continued to engage in emplo practices which discriminated on the basis of sex, ra

national origin did not satsify the particularity
ments of the Pennsylvania Human Relations Act
Act of October 27, 1955, P.L. 744, *as amended*,
Ann. Tit. 43 §951-964. The Commissioners'
filed in December of 1970 was substantially sim
one dismissed in *U.S. Steel*.

One year later, in response to the *U.S. Steel*
mission investigators sought out Eleanor Neyer,
phy, Sarah Cooper, Margaret Felmey, Lorrain
Virginia Knowles, Doris Yocum, Edith McGro
Pekala, Theresa Cheplick, Henrietta Hun
Jacyszyn and Theresa Reed, and gathered the
allegations against Crown and drafted an exter
plaint. This complaint was to "amend" the 1
missioners' complaint. Unfortunately, with the
of Reed, all of the named Complainants no long
or held recall rights with the Company, at the t
filing (in October 1975) or ninety days before a
by the statute, 43 P.S. 959 (g). This was nearly
after the filing of the Commissioners' complain
eral years after any of the named Complainar
Reed, had worked at Crown (A 91 n. 4). Howe
time of the filing of the 1975 complaint, 118 fer
employed or possessed employment rights at
13).

The Commissioners' complaint (1970), the
complaint (1971) and the amended complai
were joined for purposes of administrative pro
3). A finding of probable cause was made by C
staff on April 19, 1976.

In February of 1977, the Company filed a
dismiss the amended complaint, arguing, *inter al*
Commissioners' complaint lacked specificity (A

Commission reserved its ruling on this motion pendi completion of the public hearing. Hearings commenced October 30, 1978. Thereafter, 37 days of hearings, resu ing in 6,000 pages of transcribed testimony were held fore a panel of Commissioners (A 27).

On September 29, 1981, the Commission issued document entitled findings of fact, conclusions of la opinion and final order (A 1-56), which found that spondent Crown engaged in a pattern and practice of d crimination based on sex (female) of applicants and e ployees in hiring, job assignment, job transfer, compen tion, layoff and recall from layoff on a continuing ba (A 22).

Of the three complaints filed, the Commissione complaint (1970) was found to be insufficient as to p ticularity and therefore a "nullity" (A 28). The McNas complaint (1971) sufficient only for McNasby (A 3 and the amended complaint (1975) sufficient as a cl action and Original Complaint unto itself (A 29). T Commission found that the ninety day statute of limitati as required in §9 of the Pennsylvania Human Relations (Act), barred all but one of the (1975) named Compla ants, Reed, from recovery (A 31).

The Commission's order required, among ot things, that Crown integrate its seniority system (A 5 and pay full back wages to McNasby (A 49), and par back wages to all females employed or who possessed ployment rights at Crown from June 30, 1975 to Decem 31, 1975 (A 49). Local 266 was ordered to pay back d and reinstatement fees (A 52).

On October 9, 1981, a request for reconsiderat was filed with the Commission, primarily contesting

dismissal of the Commissioners' complaint. The r
was granted and further argument was submitted (A
On May 10, 1982, the Commission issued a supplem
opinion and order, affirming its original order with
modifications (A 59).

On June 7, 1982, most of the thirteen wome
were named on the 1975 complaint appealed to Co
wealth Court, along with Elizabeth McNasby. The
and Crown intervened. Commonwealth Court af
the Human Relations Commission's order on Sept
28, 1983. The women petitioned the Pennsylvan
preme Court for allocatur, which was granted. On J
9, 1985 the Pennsylvania Supreme Court affirm
Commonwealth Court decision, with one dissent
102). This appeal followed.

ARGUMENT

Appellants, Who Chose Not To Exercise Their Right To File Individual Complaints, Were Not Deprived of Due Process When the Commissioners' Complaint Was Found To Be Insufficiently Particular

In the Commissioners' 1970 complaint, the particulars of the discriminatory action consisted of a single, short paragraph:

> 3. On or about to wit, December 22, 1970, the complainant alleges that the respondent company engages in unlawful employment practices which are discriminatory with respect to female employes, because of their sex, in hiring, assignment, seniority, transfer, salary, overtime, promotion, denial of training, and layoff. It is further alleged that the respondent union concurs in and aids and abets the discriminatory practices of the respondent company.

The Appellants had the right also to file a complaint separate from the Commissioners' complaint. Appellants, however, chose not to file. Initially, a complaint was filed by Mary Martin, which she later, however, withdrew. After her withdrawal the Commission never heard from her again. No further correspondence from her exists in the record, and she did not testify in any of the hearings. There is no reason to believe that the Commissioners hearing the case ever knew of the existence of Mary Martin or her complaint.

The wide sweeping Commissioners' complaint, drafted next, contained no named Complainants, and when *U.S. Steel* came down, requiring specificity and particularity, the complaint itself was effectively eviscerated. In failing to comply with the statutory requirement of particularity, the Commissioners' complaint failed to state a claim upon which the Commission could act. A complaint does not state a cause of action under Section 9 of the Act unless sufficient particulars are alleged to meet at least the minimum requirements of that section. Under *U.S. Steel,* this complaint failed to meet those minimum standards, and no cause of action was stated. The Commission, of course, is bound by the decisions of the Pennsylvania Supreme Court. It may not ignore the law. *Loyal Order of Moose, Lodge No. 145 v. Pennsylvania Human Relations Commission,* 16 Pa. Commonwealth Ct. 433, 328 A.2d 180, 184 (1974), *aff'd per curiam* 478 Pa. 573, 387 A.2d 470 (1978). Where the Pennsylvania Supreme Court has interpreted a statute, the Commission is bound by that interpretation. *See Perma-Lite of Pennsylvania, Inc. v. Com., Workmen's Compensation Appeal Board,* 38 Pa. Commonwealth Ct. 481, 393 A.2d 1082, 1084 (1978).

The McNasby complaint contained the same flaw with regard to all but McNasby.

At no time did any one, except McNasby, ever step forward and file a complaint personally with the Commission. Despite the assertions of the Appellants, the withdrawn Mary Martin complaint did not suffice. Any one of the Appellants could have filed up until 90 days after the date their employment relationship with Crown ended. For most, the latest date for filing, would have been in 1973. This option was available and not taken.

In arguing that the particularity requirement of Section 9(a) of the Act violates the fourteenth amendment right to due process, Appellants rely almost exclusively on *Logan v. Zimmerman Brush,* 455 U.S. 422 (1982). In *Logan,* the complainant filed an individual complaint with the Illinois Fair Employment Practices Commission. The Commission failed to schedule a hearing within the statutory period and the complaint was dismissed. The Illinois Supreme Court upheld that dismissal and this Court reversed, holding that Logan's due process rights were violated. This case is not controlled by *Logan.*

The difference between *Logan* and the Appellants here is that *Logan* filed a complaint. The Appellants, with the exception of McNasby, did not. In *Logan,* this Court stated that: "this is not to suggest, of course, that the State must consider the merits of the claim when the claimant fails to comply with a reasonable procedural requirement, or fails to file a timely charge." 455 U.S. at 434 n. 7. A statute of limitations is a reasonable procedural requirement for a state to have. *Commonwealth v. J & R Equipment Rental Co. Inc.,* 28 Pa. Commonwealth Ct. 558, 368 A.2d 1389, 1391 (1977), *appeal dismissed* for want of a federal question, 439 U.S. 804. The Pennsylvania Human Relations Act has a 90 day statute of limitations which requires that "any complaint filed pursuant to this section must be so filed within ninety days after the alleged action of discrimination," Pa. Stat. Ann. Tit. 43, §959. This Court held in *Logan*:

> Obviously, nothing we have said entitles every civil litigant to a hearing on the merits in every case. The State may erect reasonable procedural requirements for triggering the right to an adjudication, be they statute of limitations, cf. *Chase Securities Corp.*

> *v. Donaldson,* 325 U.S. at 314-316, 89 L.Ed. 1628, 65 S.Ct. 1137, or, in an appropriate case, filing fees. *United States v. Kras,* 409 U.S. 434, 34 L.Ed. 2d 626, 93 S.Ct. 631 (1973). And the State certainly accords due process when it terminates a claim for failure to comply with a reasonable procedural or evidentiary rule. *Hammond Packing Co. v. Arkansas,* 212 U.S. at 351, 53 L.Ed. 530, 29 S.Ct. 370; *Windsor v. McVeigh,* 93 U.S. at 278, 23 L.Ed. 914.

455 U.S. at 437.

The case at bar is like *Baldwin County Welcome Center v. Brown,* 104 S.Ct. 1723 (1984), wherein the employee/respondent failed to properly and timely file a complaint with the United States District Court after receiving her right to sue letter from Equal Employment Opportunity Commission. This Court, *per curiam,* found she was barred from pursuing her complaint, despite the employer's failure to show prejudice and despite the fact that she did file her right to sue letter timely, saying "in the long run, experience teaches that strict adherence to the procedural requirements specified by the legislature is the best guarantee of evenhanded law." *Baldwin,* 104 S.Ct. at 1726, quoting *Mohasco Corp. v. Silver,* 447 U.S. 807, 826 (1979). Like the employee in *Baldwin,* Appellants here did not "trigger" any procedural due process rights. The Appellants' attempt to attach a protected property interest to the Commissioners' complaint also fails because the Commissioners' complaint was improperly pled, and was filed on behalf of the Commonwealth and represented the public interest and not their individual interests.

In *Davis v. Passman,* 442 U.S. 228 (1979), this Court stated that a "cause of action is a question of whether a particular plaintiff is a member of the class of litigants that

may, as a matter of law, appropriately invoke the power of the court." *Id.* at n. 18. The class of litigants in the instant case were those who suffered an injury because of discriminatory practices within ninety days of filing a valid complaint. The Appellants, minus, McNasby, are not in that class.

Appellants are more akin to the employees in *United Air Lines, Inc. v. Evans,* 431 U.S. 553 (1977). This Court, in *Evans,* foreclosed claims based solely upon the residual effects of discriminatory conduct which were not made the subject of a timely charge. In the case at bar, eleven of the named Complainants on the 1975 complaint alleged that discriminatory conduct by the Respondent occurring in 1971-1974, caused them injury. However true this may be, their claims were foreclosed and the Commission had no choice but to deny relief. Of all the Appellants, only McNasby suffered any injury because of discriminatory conduct by Crown Cork & Seal, or Local 266, within ninety days of the filing of the 1975 complaint. Most of them had left the employ of Crown, around 1970 although Jacyszyn left in 1966.

Nothing in *Logan,* 455 U.S. 422 (1982), requires the state to consider the merits of a claim when a timely charge has not been filed. This case is also distinguishable from *Cleveland Board of Education v. Laudermill,* 53 U.S.L.W. 4306 (U.S. March 19, 1985) (Nos. 83-1362,1363, 6392), for the same reasons. The *Laudermill* complainants filed in a timely fashion; their entitlement to procedural due process was not in question.

Appellants were clearly not deprived of a protected property interest since they failed to gain that entitlement in the first place.

The Requirement That a Complaint Be Filed in a Timely Fashion Is a Legitimate State Requirement, and Is Not a Violation of Equal Protection

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Appellants rely on *Logan,* 455 U.S. 422 (1982), in their contention that they have been denied equal protection saying that there is no difference between them and the 118 females who did have their claims heard on the merits. This misses the point. There is a major difference; the Appellants' claims were not filed while they still had an employment relationship with Crown. The 118 females who had their claims heard on the merits still had an employment relationship with Crown.

It may be true that this creates two classes of people; those who filed timely and those who did not. But, merely because a requirement creates two classes of people does not automatically make it a violation of the equal protection clause. The state has an interest in the timely disposition of claims, *Logan,* at 444 (Powell, J. concurring).

The Pennsylvania Supreme Court has specifically dealt with this issue in *Commonwealth v. J & R Equipment Rental Co., Inc.,* 28 Pa. Commonwealth Ct. 558, 368 A.2d 1389, 1391 (1977), *appeal dismissed,* 439 U.S. 804 (1978). Their petitions for review with the Department of Revenue had to be filed within sixty days. Those persons mailing their petitions on the 59th day were separated into two groups, those whose petitions were received by the Department of Revenue on the 60th day and those whose petitions were received on the 61st day. The latter group filed untimely petitions which were unacceptable. The court held that equal protection was not denied by this procedure which is applied to legal proceedings in

which a particular person is affected because that procedure would also be applied to any other person under similar circumstances and conditions. The case at bar is similar to *Inda v. United Air Lines, Inc.*, 565 F.2d 554 (9th Cir. 1977), *cert. den.* 435 U.S. 1007 (1977). The claimants in *Inda* did not file timely charges with EEOC, but argued that the timely filing by *others* on the same issue tolled the statute of limitations for them. The Court found otherwise.

> We cannot agree.
>
> . . .
>
> Title VII painstakingly spells out the procedure by which one obtains a right to sue on his own behalf and the times within which certain steps must be taken. In *United Air Lines v. Evans*, 553 U.S. 431, 97 S.Ct. 1885, 52 L.Ed. 2d 571 (1977), the Supreme Court strictly enforced these provisions, holding that Evans' claim was barred by her failure to file a timely charge with the EEOC.

Id. at 558.

Like the *Inda* claimants the Appellants failed to file timely complaints. *Logan* did not. *Logan* could claim equal protection, Appellants can not.

CONCLUSION

For all the foregoing reasons, it is requested that t
Court dismiss the appeal for want of a federal questi
and affirm the decision of the Pennsylvania Supre
Court. It is further requested that if the appeal is dismis
and the case is considered as a petition for writ of ce
orari, that the petition be denied for the same reasons.

Respectfully submitted,

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